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Annual report of the Special Rapporteur on the right to education, Katarina Tomaševski, submitted pursuant to Commission on Human Rights resolution 2001/29

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Executive summary

The Commission on Human Rights, in its resolution 2001/29, renewed the Special Rapporteur's mandate for three years and outlined its contours. The Commission's emphasis on the evolving global education strategy has prompted the Special Rapporteur to prioritize human rights mainstreaming. Its key prerequisite is broadening the rule of law to encompass macroeconomic and education strategies, and its priority to eliminate obstacles, especially financial obstacles. Positive developments include increasing commitments to free primary education and their reinforcement by the allocation of funds freed through debt relief. Reaffirmation of the right to education remains necessary to counter continuously decreasing aid flows and the risk that progressive liberalization of trade in education will undermine progressive realization of the right to education.

The Special Rapporteur has continued translating basic human rights requirements into guidance for education. Creation of rights-based indicators has followed from her 4-A scheme for structuring governmental human rights obligations, and represents her contribution to the current emphasis on monitoring and accountability in education strategies.

The crucial importance of the practice of States for global policy-making has been underscored by the Commission's enumeration of key dimensions of the right to education. The Special Rapporteur has initiated all-encompassing gathering of information so as to ascertain the nature and scope of the right to education in States' practice. She has developed analytical guideposts for monitoring the progressive realization of the right to education, undertaken research and analysis, and will carry out this process through correspondence with Governments. The identification of *all* categories and individuals deprived of the full enjoyment of the right to education has necessitated combining the conventional legal approach with an emphasis on economic exclusion, which is especially important at a time of economic recession.

The application of human rights law throughout the process of education has been elevated within her priorities because of increasing numbers of alleged denials and violations brought to the attention of the United Nations. She has continued working with other special rapporteurs and cooperating with treaty bodies so as to facilitate the process of clarifying the nature and scope of the right to education.

The human rights perspective enables the linking of education with work, employment and self-employment, as well as with suppression of terrorism and prevention of violence. The indivisibility and interrelatedness of human rights is particularly useful for overcoming sectoral, professional and disciplinary fragmentation, as well as operationalizing rights-based development.

Introduction

1. Recent years have been characterized by a surge of interest in economic and social rights. This welcome change promises to redress their previous marginalization and enhance their visibility, contributing to a key objective for the Commission's thematic mechanisms in economic and social rights. Expansion of jurisprudence on the right to education at the domestic and international levels has been supplemented by the work of national human rights institutions. In international cooperation, the shift to rights-based development is uniting fragmented sectoral approaches within the integrated conceptual framework which the human rights approach entails. This facilitates cross-sectoral linkages whereby education can be adapted to the goals of poverty eradication, gender equality or prevention of terrorism and violence.

2. These developments have generated increasing demands for the Special Rapporteur's contributions to a myriad of meetings and projects relevant to the right to education. Her ability to contribute to ongoing developments has recently improved although there was inadequate servicing by the Office of the High Commissioner for Human Rights between March and September 2001. The Special Rapporteur apologizes to all those who did not receive responses to their correspondence, and to those whose concerns have not been immediately investigated. The Office of the High Commissioner for Human Rights has now been able to secure full-time professional support for the mandate on the right to education as of September 2001, and all overdue work is likely to be finalized by the fifty-eighth session of the Commission.

3. The Commission on Human Rights, in its resolution 2001/29, renewed the Special Rapporteur's mandate for three years. Its emphasis on the evolving global education strategy has prompted the Special Rapporteur to prioritize human rights mainstreaming. She has continued building bridges between the worlds of education, macroeconomics and human rights by operationalizing basic human rights requirements into rights-based indicators.

4. The crucial importance of the practice of States for global policy-making has been underscored by the Commission's enumeration of key dimensions of the right to education. The Special Rapporteur has initiated all-encompassing gathering of information so as to ascertain the nature and scope of the right to education in States' practice, and continued her practice of carrying out visits to countries whose experiences provide important insights. From 24 September to 10 October 2001, in the immediate aftermath of 11 September, she carried out a mission to the United States of America, her report on which is before the Commission in document E/CN.4/2002/60/Add.1. Also, she planned to carry out a mission to Turkey in December 2001 but the Government requested that her visit be delayed to 2002 and she hopes that it will take place at the beginning of February 2002.

I. SUBSUMING MACROECONOMIC AND EDUCATION STRATEGIES UNDER THE RULE OF LAW

5. The commitment to mainstreaming human rights in international cooperation has cleared the way towards rights-based development. Moreover, the grounding of human rights in the rule of law facilitates improving the governance of education. Since governance is commonly defined as the exercise of power, it ought to be subject to the rule of law so as to prevent its arbitrary use. Human rights safeguards complement stability, predictability and the elimination

of arbitrariness, which have been singled out as preconditions for economic development.[1] There is hence a challenge for the human rights community to clearly and comprehensively translate basic human rights standards into a language which economists, development or educational personnel can easily understand and apply. Gunnar Myrdal pointed out in 1970 the need to supplement economic policy-making with data on those to whom it refers: "Place an economist in the capital city of any underdeveloped country and give him the necessary assistance and he will in no time make a plan ... No sociologist, psychologist or anthropologist would ever think of doing such a thing."[2]

6. A commitment to specified ends without a corresponding commitment to the means necessary to attain them leaves the ends unattained. Willing the ends entails an obligation to will the means too. The goal of securing education for all children was not attained by the year 1980 or 2000. Concerns that the year 2015 may record yet another failure can best be alleviated by specifying the responsibilities for undertaking specific actions and envisaging remedial measures. A new model for the forging of global education strategy developed at Jomtien in 1990 and Dakar in 2000 is characterized by the leadership of international agencies. The heads of the lead agencies, UNESCO, the World Bank, UNICEF, UNDP and UNFPA have recently pointed to the need "to build leadership and mobilize resources for education",[3] thus identifying difficulties in applying the habitual State-centred approach to the changed global governance in education. The Dakar Framework for Action has emphasized that individual Governments are primarily responsible for achieving and sustaining free, all-encompassing and compulsory primary education, as well as pointing out that action should be primarily domestic. It has added that global coordination should be galvanized by UNESCO through a High-Level Group as "an opportunity to hold the global community to account for commitments made in Dakar".[4]

7. Accountability has become a key demand in international cooperation. The human rights approach prioritizes law in holding Governments accountable for their pledges, individually and collectively. Once a pledge becomes a human rights obligation, failures to attain the agreed ends by the specified means become denials and violations of human rights which Governments, individually and collectively, have to redress by compensating the victims and ensuring that they do not happen again.

8. Recent global initiatives to impart a higher priority to education such as the Dakar Framework for Action and the United Nations Millennium Declaration, or the forthcoming General Assembly Special Session for Children, highlight the importance of the human rights input (E/CN.4/1999/49, paras. 12-19). The *2001 Monitoring Report on Education for All* has indeed singled out key human rights dimensions: "Though universal primary enrolment remains the principal means of ensuring basic education for all, it is limited to those in the appropriate age group, those for whom schools are accessible and, in many cases, those who can afford the costs of schooling."[5]

9. Age provides an excellent example of the need to examine educational strategies and related statistics through the human rights lens. International human rights law posits that everybody has the right to education. If education is defined as an age-specific right for children aged 6-11, over-aged children may be precluded from access to school.[6] The Constitutional Court of South Africa recently addressed allegations of unfair discrimination against children

aged six, who had been denied access to primary school for which the age was set at seven: "The contention was that the discrimination was unfair and against the bes' interests of the child because the requirement allowed for no exemptions for children who did not reach seven during the year, even if they were manifestly ready for school. The initial focus on exemptions resulted in affidavits dealing extensively with the validity of school-readiness tests in a multicultural society, the main disagreement between the respective experts being whether reliable and objective tests could at present be employed in South Africa."[7]

10. The best interests of each child, singled out in the Convention on the Rights of the Child, collide with administrative categorizations based on statistical averages. If the right to education is limited to primary and/or the first stage of basic education only for children in a determined age range, adolescents and adults, or younger children, may be precluded from claiming their right to education. Ambitions to recognize lifelong learning as a right would then move in counterpoint to the effectively recognized right to education.

A. Renewed commitments to free primary education

11. When the core global human rights standards mandating primary education to be free and compulsory were adopted, there was full global consensus behind them. Enrolments rapidly expanded in the 1960s and the 1970s, to then halt owing to economic crises and diminished public funding.[8] Decreased fiscal allocations for education in the North, before these spread to the South, resulted in decreased primary-school enrolments.[9] The initial consensus was ruptured in the 1980s as consecutive economic crises led to a redefinition of the role of the State in education. The 1980s marked continued decreases of public funding for education begun in the 1970s, accompanied by the introduction of school fees in primary education (E/CN.4/2000/6, para. 48). Treating allocations for education as discretionary facilitated reductions of public expenditure, calls for privatization of education were justified by expected budgetary savings. Vito Tanzi of the International Monetary Fund and Ludger Schuknecht of the European Central Bank have warned, however, that "budgetary savings from more private sector involvement in education are likely to be small".[10]

12. A consequence of the economic crises and diminished public funding of education was "the exclusion of poorer students from education and partial return to educational patterns that perpetuate social inequalities".[11] Another consequence was a rupture between the duty of parents to educate their children and their inability to afford the cost of schooling. In many countries, laws on compulsory education require parents to ensure school attendance of their children. These laws were written under the assumption that compulsory schooling would be free of charge, and they cannot be enforced when parents cannot afford the cost of education (fees, uniforms, books, transportation or school meals). Bringing parents to court for breaches of the compulsory-education requirement and imposing fines does not address the underlying problem. Parents cannot afford to pay the fines just as they could not afford the school fees in the first place. Solving the underlying problem necessitates moving upwards, to resource allocation at the local, national and global levels, as well as outwards so as to integrate human rights in fiscal and economic policies.

13. Commitments to free primary education have become part and parcel of global strategies at the turn of the millennium, creating hope that previous retrogression can now be reversed. At the domestic level, Malawi led the way in 1994 (E/CN.4/2000/6, para. 48) and Uganda followed in 1997 (E/CN.4/2000/6/Add.1). Commitments made by Cameroon, the Gambia, Kenya, Lesotho, Nigeria, Tanzania and Zambia at the turn of the millennium have reinforced this trend. On 28 November 2001, the Parliament of India (Lok Sabha) adopted a 93rd constitutional amendment making education a fundamental right. These commitments require that international creditors and donors translate their words into deeds. Also, they necessitate domestic safeguards to ensure that funds earmarked for education reach their intended destination and that school fees are not continued under a different guise. The Special Rapporteur is particularly encouraged by the forthcoming Global Week of Action, from 21 to 27 April 2002, organized by the Global Campaign for Education and dedicated to the right to free education. It promises to serve as a catalyst for the abolition of all fees and charges in basic education.

B. Continuing dialogue with the World Bank

14. The Special Rapporteur has consistently emphasized the necessity of overcoming discord in global policies, whereby the human rights priority for education in fiscal allocations is thwarted by shifting the cost of education to individuals, families and communities. The outcomes of her dialogue with the World Bank were summarized for the Commission's fifty-seventh session (E/CN.4/2001/52, paras. 31-41) and dialogue has continued.

15. School fees, the Special Rapporteur's most urgent concern (E/CN.4/1999/49, paras. 32-41, E/CN.4/2000/6, paras. 45-55, E/CN.4/2001/52, para. 39), have apparently been subject to reconsideration within the World Bank with, as yet, an unpredictable outcome. Just after the Commission's fifty-seventh session, on 23-24 April 2001, while participating with representatives of the World Bank in a seminar on the elimination of user fees,[12] the Special Rapporteur was given an undated and unsigned statement of the World Bank on its commitment not to promote fees in primary education. In September 2001, another non-binding - this time public - statement announced that the World Bank "opposes user fees for primary education". The accompanying explanation was qualified by opposition to user fees for poor people, which may mean that fees should continue for people who may be classified as not poor (or not poor enough) by the Bank's criteria, in defiance of international legal obligations that require primary education to be free. The text continued: "Where Governments do levy user fees, the Bank helps Governments to reduce the burden on poor people by recommending, and providing finance for, targeted subsidies." This may continue parallel administrations, one collecting fees for primary education, another handling subsidies. These tend to be much more expensive than the fees and subsidies are worth. Another concern is an apparent Bank endorsement of the charging of school fees by local communities.[13] This is often necessitated by the inability of the central government to fund schools, resulting in "informal charges to parents and other fund-raising initiatives at the school level in supplementing public funding".[14]

16. The Special Rapporteur's key recommendation to the World Bank was "an in-house review to identify where school fees in primary education are being charged" (E/CN.4/2001/52, para. 81). She has been promised results of this review in December 2001 and will report to the Commission at its fifty-eighth session. A recent initiative by the United States which calls for

increased funding for education, including replacement of loans by grants, is also a signpost of change, which the Special Rapporteur is closely following. She is planning to pay another visit to the World Bank at the beginning of March 2002 so as to be able to provide the Commission with a full and up-to-date oral report.

C. Debt relief and aid for education

17. Alleviation of unsustainable debt burdens and increased international funding for education (E/CN.4/2001/52, para. 51) are key to reversing retrogression regarding the right to education, especially in Africa and Central Asia. The Special Rapporteur deems that mainstreaming necessitates integration of international human rights obligations in the intergovernmental process of negotiating debt relief. Three parallel global processes - debt relief, Education for All (EFA) and human rights reporting - could be linked and, eventually, merged:

(i) The creation and approval of poverty reduction strategy papers (PRSPs) does not, as yet, include references to international legal obligations of the States qualifying for debt relief. PRSPs provide blueprints for the allocation of funds transferred from debt servicing to development, wherein education figures prominently. Thus far, PRSPs for 8 countries have been finalized[15] and another 13 are expected to complete the process soon.[16] The Special Rapporteur deems that this process necessitates human rights analysis alongside their existing assessments.[17] Distributional impacts of past education reforms require human rights impact assessment and the compatibility of fiscal choices with international legal obligations demands careful scrutiny.

(ii) National plans to be elaborated within Education for All are fewer in number than PRSPs,[18] and this process also lacks human rights input. Because national plans are often generated in parallel with the process of debt relief or aid negotiations, bridging the abyss between two parallel structures seems necessary and useful. Translating the explicit references to human rights in the Dakar Framework for Action (E/CN.4/2001/52, paras. 42-44) into national, as well as creditors' and donors', implementing plans, seems particularly opportune as it would bridge one more abyss.

(iii) Law makes choices made within debt relief or education strategies sustainable by defining the rights and corresponding responsibilities. The reporting process under international human rights treaties includes references to negotiating debt relief and forging education strategies. For example, the Committee on Economic, Social and Cultural Rights has recommended that Honduras explicitly take the Covenant into account in relation to its PRSP.[19] The Committee on the Rights of the Child has noted that only 60 per cent of children in Mauritania attend school and has suggested that priorities ensure the realization of the rights recognized in the Convention,[20] which can be facilitated through the ongoing PRSP process.

18. The linchpin for these three parallel processes is international cooperation, envisaged as key to the realization of economic, social and cultural rights and the rights of the child. Nevertheless, aid for education has not increased following the 2000 Dakar Education for All Forum, despite the donors' pledges that no country committed to attaining education for all would be left without external funding. The first meeting of the High-Level Group on Education for All, held at UNESCO on 29 and 30 October 2001, was "alarmed by the insignificant proportion of overall bilateral and multilateral assistance provided for basic education".[21] Indeed, the World Bank has decreased its lending for education, from $1.8 billion in the 1990s to just under $1 billion in 2000 and 2001.[22] The downward trend in aid flows has thus continued and ODA (official development assistance) diminished to $53 billion in 2000 from $56 billion in 1999, although European donors such as Belgium, Denmark, Luxembourg, the Netherlands, the United Kingdom and Sweden have increased their aid.[23] Moreover, the European Union's Development Council on 8 November 2001 agreed to increase aid so as to reach the 0.7 per cent target.[24] It is therefore possible to anticipate a reversal of the downward trend in aid, which would be as welcome as it is overdue. The Special Rapporteur will report to the Commission during its fifty-eighth session on further developments.

D. Determining boundaries between human rights law and trade law

19. The Commission has requested that the Special Rapporteur continue studying the impact of globalization on the right to education (see resolution 2001/32). She has focused on trade in education services (E/CN.4/2000/6, paras. 70-71, E/CN.4/2000/6/Add.2, para. 18; E/CN.4/2001/52, paras. 55-59, E/CN.4/2001/60/Add.1, paras. 36-39) and established informal contacts within the World Trade Organization in order to follow pertinent developments. She is grateful for the openness with which all her inquiries have been met.

20. The need to forge a global human rights policy has been heightened by resumed negotiations on the liberalization of trade in education services. Exporters of education services have set the tone, slanting education towards an internationally traded service. Defining the nature and scope of education that should remain exempt from trade and continue as a free public service has attained increased importance. The question is whether we are heading towards progressive liberalization of trade in education services or progressive realization of the right to education. As noted by the Government of New Zealand, at stake is "the divide between public policy and commercial activity".[25]

21. Education as a governmental responsibility and public service continues to enjoy the support of the overwhelming majority of Governments in the world. The number of commitments on education under the GATS (General Agreement on Trade in Services) is the smallest of all sectors. Moreover, proposals for further liberalization tend to concentrate on post-compulsory education, as well as emphasizing that trade should supplement rather than displace public education.[26] The Commission on Human Rights has been addressing education as it pertains to the rights of the child and emphasizing the need for progressive introduction of free secondary education (see resolution 2001/75). There is, however, no global human rights policy concerning post-secondary education and the Special Rapporteur feels that rapid developments in international trade law necessitate a decisive reaffirmation of education as a human right.

II. MONITORING PROGRESSIVE REALIZATION OF THE RIGHT TO EDUCATION

22. Human rights constitute a cross-cutting issue, enabling integration of fragmented sectoral strategies. Moreover, the human rights approach is based on regulatory and institutional coherence, as human rights are interrelated and interdependent. This often necessitates legal and institutional reform so as to create a comprehensive legal framework encompassing all facets of education and all human rights.

23. In the past three years, the Special Rapporteur has developed her analytical framework (E/CN.4/1999/49, paras. 51-74; E/CN.4/2000/6, paras. 32-65; E/CN.4/2001/52, paras. 64-77) so as to identify key parameters of the practice of States in progressive realization of the right to education. She sent a general request for information on 1 August 2001 with a view to a comprehensive assessment of the status of the right to education worldwide. She is greatly appreciative of the responses from Senegal and Laos to her preliminary assessment of the constitutional status of the right to education (E/CN.4/2001/52, paras. 67-68) and the replies received by the time this report was finalized, on 10 December 2001, from Luxembourg, Uruguay, Colombia, Tunisia, Egypt, Kuwait, Qatar, Belarus, Thailand, the People's Republic of China, Spain, Georgia, Suriname, San Marino, Azerbaijan, Lebanon and Slovenia to her request for information. The Special Rapporteur has undertaken data-gathering and analytical work to facilitate this necessary, albeit time-consuming process, as well as planning her missions to be able to study *in situ* progressive realization of the right to education. She has requested an invitation to visit Ethiopia and hopes to do so in 2002.

24. The lack of recognition of basic rights, starting with the right to registration at birth and the right to acquisition of citizenship, often preclude children from exercising their right to education. Nomadic populations tend to experience insurmountable obstacles in getting their rights acknowledged and accepted in today's State-centred world, as do minorities which are regional rather than national. The term *stateless* is used for individuals but not for minorities. Minorities such as Bidun or Kurds in the Middle East, or Roma in Europe, exemplify the need to study exclusion from education affecting considerable numbers of children without being recorded in statistics or encompassed by domestic laws. The Special Rapporteur has started examining this subject through correspondence with Governments and by planning her forthcoming visit to Turkey.

25. In many countries non-citizens do not have a legally recognized right to education, despite provisions of international human rights treaties. The Convention on the Rights of the Child posits especially that every child has the right to education. The Special Rapporteur's initial survey of constitutional guarantees of the right to education (E/CN.4/2001/52, para. 67) has revealed that absence of citizenship may constitute the most widespread legal obstacle to the enjoyment of the right to education. She will therefore carry out an in-depth study of this problem, in cooperation with the Committee on the Rights of the Child, the Office of the United Nations High Commissioner for Refugees (UNHCR), and the International Labour Organization (ILO), and bring its results to the attention of the respective Governments in order to enable them to verify, complement or correct her findings.

26. The Special Rapporteur has further developed her analytical framework to capture horizontal and vertical division of competences regarding the right to education. Horizontally, education pertains to a large number of governmental and intergovernmental institutions, ranging from education to finance or gender. Vertically, governance of education involves all levels, from local to global. The unique advantage of the human rights approach is its comprehensive legal framework, applicable regardless of the horizontal and vertical division of competences. The Special Rapporteur's focus on individual and collective governmental obligations has enabled her to operationalize the rights-based approach, as her contribution to human rights mainstreaming in international cooperation.

A. Creating rights-based indicators

27. Statistical averages camouflage gender, racial, ethnic, linguistic or religious fault-lines, which are crucial from the human rights perspective. Data are increasingly disaggregated by sex, but not by other grounds of discrimination that frequently constitute an obstacle to the enjoyment of the right to education. The recording of race, ethnicity or religion is rare, even in countries with highly developed statistical services.

28. Rights-based statistics necessitate translating human rights law into a language that can be understood and applied in education statistics. The Special Rapporteur has therefore further elaborated her 4-A scheme[27] so as to make it suitable for generating data based on parameters of rights-based education. It is presented in the table *Translating the 4-A scheme into rights-based indicators*.

29. The key innovations introduced by the human rights perspective relate to those features of the intake that are particularly important for the process of teaching and learning, the correspondence between intake and input, human rights safeguards for the process of education, and the impact of education on the enjoyment of all human rights.

Translating the 4-A scheme into rights-based indicators

AVAILABILITY	Correspondence between the PROFILE OF THE INTAKE and INPUT Correspondence between BUDGETARY ALLOCATIONS and human rights obligations Governmental supervision of EDUCATIONAL INSTITUTIONS to ensure minimum standards and foster INCLUSION Professional EDUCATORS PARENTAL CHOICE OF EDUCATION for their children	The PROFILE to include disaggregation by all internationally prohibited grounds of discrimination; BUDGETARY ALLOCATIONS at the central and local level should correspond to the guarantee of free and compulsory education for all children up to the minimum age for employment and progressive realization of the right to education; Licensing, supervision and funding of EDUCATIONAL INSTITUTIONS should correspond to human rights law, including the objective of enhancing ALL-INCLUSIVE EDUCATION; The status of PROFESSIONAL EDUCATORS should correspond to their internationally recognized rights and trade union freedoms; Recognition and enforcement of PARENTAL CHOICE should conform to international human rights law.
ACCESSIBILITY	COMPULSORY EDUCATION: elimination of all obstacles to access to education for all school-aged children POST-COMPULSORY EDUCATION: non-discriminatory access and affordability	Elimination of OBSTACLES: legal and administrative; direct, indirect and opportunity cost of education; transportation; Identification of obstacles regarding POST-COMPULSORY EDUCATION corresponding to internationally prohibited grounds of discrimination; Review of access to post-compulsory education by the criterion of AFFORDABILITY in accordance with international human rights law.
ACCEPTABILITY	MINIMUM STANDARDS TEACHING PROCESS LEARNING PROCESS	MINIMUM STANDARDS for quality, safety or environmental health should be enforced; Human rights law should guide the TEACHING PROCESS, especially the purpose, contents and methods of instruction, academic freedom or discipline; The LEARNING PROCESS requires the elimination of barriers, such as poverty-induced obstacles, language of instruction, ability/disability.
ADAPTABILITY	CONCORDANCE OF AGE-DETERMINED RIGHTS OUT-OF-SCHOOL EDUCATION for categories who cannot access educational institutions Safeguarding HUMAN RIGHTS THROUGH EDUCATION by adapting education to the enjoyment of all human rights	CONCORDANCE between the school-leaving age and the minimum age for employment, marriage, military recruitment, criminal responsibility; OUT-OF-SCHOOL EDUCATION for children and young people deprived of their liberty, refugees, internally displaced people, working children, nomadic communities; THE IMPACT OF EDUCATION ON ALL HUMAN RIGHTS to be assessed by indices such as graduate unemployment or increasing racism amongst school leavers.

B. Benchmarks for monitoring

30. The history of human rights can be depicted through two broadening concentric circles, the first showing a gradual extension of recognized rights and the second an incremental inclusion of those previously excluded. The rights first bestowed upon adult, propertied, white men have been gradually extended to women, then to non-white adults and later also to children. The right to education does not have a long history, nor does it - as yet - enjoy universal recognition as a human right. Its progressive realization can be condensed to three main stages in the process of overcoming exclusion:

> The first stage involves bestowing the right to education on those that were historically denied it (such as indigenous peoples or non-citizens) or continue to be excluded (such as domestic servants or members of nomadic communities); it routinely entails segregation, whereby girls, indigenous peoples, children with disabilities or members of minorities, are given access to education but confined to special schools;
>
> The second stage then requires tackling educational segregation and moving towards integration, with newly admitted categories having to adapt to the available schooling, regardless of their mother tongue, religion, ability or disability; girls may be admitted to schools whose curricula were designed for boys, indigenous and minority children integrated in schools that provide instruction in alien languages and descriptions of history that deny their very identity;
>
> The third stage necessitates adaptation of education to the diversity of subjects of the right to education, replacing the previous requirement upon entrants to adapt themselves to available schooling with the adaptation of education to everyone's equal right to education and equal rights in education.

1. Eradicating exclusion

31. Education statistics inevitably show that not all children have access to primary education. The standard follow-up to this finding are efforts to determine how many children are affected, but these efforts never yield precise figures because comprehensive data on children are lacking where they are needed the most. The Special Rapporteur emphasized in her first report the need to differentiate between children who are *unreached* and those who are *excluded* (E/CN.4/1999/49, para. 58). The grounds for exclusion may coincide with individual prohibited grounds of discrimination or combine several of them. The first step towards eliminating discrimination in education thus consists of itemizing the contemporary pattern of discriminatory exclusion in the world.

32. In its resolution 2001/29, the Commission on Human Rights reiterated the necessity to progressively ensure that primary education is compulsory, accessible and available free to all and identified those often denied education: girls (including pregnant girls and child-mothers); children in rural areas; minority, indigenous, migrant and refugee children; internally displaced

children, children affected by armed conflicts, children with disabilities, children affected by HIV/AIDS and children deprived of their liberty. The Commission prioritized children living in poverty, those with special educational needs and those requiring special protection (resolution 2000/85 on the rights of the child), with added emphasis on the internally displaced (resolution 2001/54) and, once again, minorities (resolution 2001/55). The Commission's listing of categories often denied education illustrates how the initially simple and neat legal categorizations of prohibited grounds and types of discrimination have gradually become complex. An increasing number of collective and individual characteristics have been classified as prohibited grounds of discrimination. Nevertheless, discriminatory practices often merge a host of prohibited grounds of discrimination with additional exclusionary criteria that have not yet been outlawed in domestic laws.

33. The Commission's enumeration of those who are likely to be excluded or unreached requires recalling the path travelled thus far and outlining signposts for proceeding further. The first steps have involved identifying those features which typically entail denials of the right to education and listing them as prohibited grounds of discrimination. The International Labour Organization highlighted in 1988 drawbacks of that approach: "[A]ttempts to define race and colour are of little value in the application of legislation that is intended to combat discrimination insofar as it is not the race, colour or ethnic origin of the person who is discriminated against that is really the point at issue, but rather the negative aspects that the author of the discrimination imputes to the person who is the victim of discrimination."[28] Indeed, schools reflect the surrounding setting and may reinforce prejudicial portrayals of victims of discrimination. Education is embedded in the existing values but also helps create new values and attitudes. Hence, human rights law mandates its deliberate employment to eliminate discrimination, which requires a permanent process so that education can be adjusted to changes in society.

34. It is relatively easy to capture denials of education by tabulating and then quantifying legal and administrative exclusions from education. This method cannot capture the fear that children may feel because they are female, improperly dressed, or have been victims of harassment and are afraid to go to school; fear cannot be tabulated and converted into statistics. Girls are targeted more than boys, the cause of bullying can be their dress code, and the consequence their dropping out of school[29] Fear can be a consequence of prejudicial portrayals, particularly frequent in post-conflict situations. The Special Representative on internally displaced persons has emphasized "fear of the identification of children for what they are and repression or reprisals that may target the family if children are sent to school"[30].

2. Nurturing inclusive education

35. In overcoming exclusion, the history of education has exhibited segregation on all nowadays prohibited grounds of discrimination. Racial segregation, in its extreme form of apartheid, brought about the earliest international calls for desegregation as well as international treaties outlawing discrimination in education and mandating its elimination. Girls used to be - and still are in some countries - separated from boys, and single-sex schools are a topic of continued debate (E/CN.4/2000/6/Add.2, para. 83). Different religious

communities are often allowed to educate "their" children separately, as in Northern Ireland. Language is frequently used as justification for segregation in schooling and has generated a stream of court cases in Canada. Children with disabilities still tend to be segregated in "special schools", despite overwhelming empirical evidence in favour of all-inclusive schooling.

36. In 1947, the first United Nations report on the prevention of discrimination emphasized that "the whole field of action to prevent discrimination requires a vast programme of education". The emphasis on education derived from knowledge that no law would be effective, and might indeed be counterproductive, unless it enjoyed at least some support by those to whom it was addressed and the general support of the population. The words of caution about educational programmes merit repeating: "Forcing a prejudiced person to read or hear exhortations on tolerance may only increase his prejudice. Overenthusiastic appraisals of the contributions of a minority may create a reaction of distaste for members of that minority; and programmes improperly presented, even with the best intentions, may create an awareness of group difference that did not previously exist."[31]

37. Literature about discrimination abounds with assertions that prejudice breeds discrimination, yet the reverse is also true. Discrimination as a medium of indoctrination breeds prejudice. Children learn through observation and imitation. They are likely to start perpetuating discriminatory practices much before they can understand the word "discrimination" and to internalize underlying prejudices in the same way as they accept any other facet of the way of life in their family and community. Prejudice is sustained from one generation to another through social usage. When it favours individual and group self-interest, it is easy to rationalize. Having domestic servants makes life easy for the family. As they work in individual households, nobody knows how many they may be or where they are, but fragmentary data highlight their plight. Domestic servants may start working at the age of four, at least 80 per cent are girls, and 70 per cent are come from categories victimized by discrimination, such as frowned-upon minorities or migrants.[32] The underlying rationale behind such phenomena includes rational arguments: the lack of equal opportunities for victims of discrimination is easily converted into factual evidence of their inferiority, feeding the perpetuation of discrimination and the underlying prejudices. In 1957, the first United Nations study on discrimination in education had this to say about the rationale for discrimination: "A policy based on fear of losing a privileged position necessarily entails measures to deny education to an entire population group, or to allow it access only to education at a lower level."[33]

C. Signposts for the elimination of discrimination

38. Education can be used as a means to both retain and eliminate inequality. Because it can serve these two mutually contradictory purposes, international human rights law prioritizes the elimination of inequality as a key purpose of education. Many factors and processes lead in the opposite direction. The inter-generational transmission of educational inequalities is exacerbated by the increasing costs of education. Denials of education to children determined to be "uneducable" are reinforced by inappropriate languages of instruction, which increase the

numbers of children deemed "uneducable". Non-adaptation of education to the life prospects of learners leads to lack of motivation to attend school. Endowing education with the capacity to achieve desired rather than unwanted outcomes necessitates reviewing it in its entirety according to human rights criteria.

39. It is well known that family background constitutes one of the key determinants of children's education, with the educational development of infants from the highest class being far superior to those in the lowest class (E/CN.4/2000/6/Add.2, para. 48). This gap broadens through the inter-generational transmission of educational advantage or deprivation. As already described by the Special Rapporteur on economic, social and cultural rights in 1975, "inequality in education is the most important means by which occupational selection takes place, and hence the most important means by which advantages and disadvantages are transmitted from generation to generation".[34] The pattern of advantage and disadvantage affects generations differently, depending on their sex and changing gender roles, or their perceived abilities and disabilities. Monitoring progressive realization of the right to education is broadening and deepening our knowledge of inequalities that need to be exposed so that they could be effectively opposed and remedied.

1. Gender

40. Strengthened and broadened commitments to gender equality in access to education have not yet evolved into similar commitments to attaining gender equality through education. There is a colossal difference between the two. Getting girls into schools often founders because education as a single sector does not, on its own, generate sufficiently attractive incentives for the girls' parents and the girls themselves if educated girls cannot apply their education to sustaining themselves and/or helping their parents. Years of attending school appear wasted when women do not have access to employment and/or are precluded from becoming self-employed, do not have a choice as to whether to marry and bear children, or their opportunities for political representation are foreclosed.

41. One of key commitments at Dakar was to eliminate gender disparities in primary and secondary education by 2005.[35] As there are merely three years left to 2005, this will be the first performance benchmark. Statistics needed to assess progress are lacking, especially for secondary education. Data for monitoring gender gaps in primary school enrolments are increasingly available and are reproduced in the table *Countdown to 2005: Closing the gender gap in primary school enrolments*.

42. Compared with the Special Rapporteur's previous analysis of data on the gender gap in primary school enrolments (E/CN.4/1999/49, para. 55), there is evident progress in data collection, necessary for monitoring and corrective action. There are countries where not even estimates of the gender gap are available, although all indications point to the necessity of prioritizing girls' education. The scope for such corrective action is depicted by UNICEF's estimate that girls' enrolment in Afghanistan may be as low as 5 per cent,[36] by the 26 per cent gender gap in Chad and 33 per cent in Yemen, or the 11 per cent inverse gender ratio in Lesotho.

Countdown to the year 2005: Closing the gender gap in primary school enrolments

Reverse gender gap: Lower enrolment of boys			No gender gap, or less than 2% difference			Less than 10% difference in enrolments favouring boys			More than 10% difference in enrolments favouring boys		
	Girls	Boys		Girls	Boys		Girls	Boys		Girls	Boys
Bahrain	98%	96%	Argentina	100%	100%	Algeria	92%	96%	Burkina Faso	28%	40%
Botswana	82%	79%	Bolivia	100%	100%	Angola	53%	61%	Central African Republic	43%	64%
Cuba	97%	96%	Chile	87%	88%	Brazil	96%	100%	Chad	42%	68%
Dominican Republic	88%	87%	China	100%	100%	Burundi	34%	41%	Côte d'Ivoire	51%	67%
Jordan	83%	82%	Costa Rica	92%	92%	Comoros	46%	54%	Djibouti	27%	37%
Lesotho	64%	56%	Fiji	100%	100%	Democratic Republic of the Congo	31%	33%	Ethiopia	30%	41%
Madagascar	63%	62%	Kuwait	67%	68%	Egypt	89%	95%	Guinea	37%	54%
Namibia	90%	83%	Malaysia	98%	98%	El Salvador	80%	82%	Guinea-Bissau	44%	62%
Paraguay	92%	91%	Maldives	100%	100%	Eritrea	31%	36%	Iraq	74%	85%
Rwanda	92%	90%	Mauritius	93%	93%	Gambia	57%	65%	Liberia	35%	46%
Samoa	98%	95%	Mexico	100%	100%	Guatemala	80%	85%	Mali	34%	49%
Swaziland	78%	76%	Nicaragua	80%	80%	Indonesia	82%	86%	Morocco	73%	85%
Tanzania	49%	47%	Peru	100%	100%	Iran	78%	81%	Niger	20%	32%
Uruguay	92%	92%	Qatar	85%	86%	Laos	73%	79%	Papua New Guinea	78%	91%
Zimbabwe	91%	90%	Sri Lanka	100%	100	Lebanon	77%	79%	Senegal	54%	64%
			United Arab Emirates	82%	83%	Mauritania	58%	62%	Togo	78%	99%
			Vanuatu	100%	100%	Mozambique	37%	45%	Yemen	44%	77%
			Venezuela	88%	88%	Oman	65%	67%			
						Philippines	97%	99%			
						Saudi Arabia	57%	61%			
						Sierra Leone	55%	60%			
						Sudan	42%	50%			
						Syria	89%	96%			
						Thailand	76%	78%			
						Tunisia	96%	99%			
						Zambia	72%	74%			

Note: The data have been collected by the UNESCO Institute for Education as part of the monitoring process of Education for All (*2001 Monitoring Report on Education for All*, UNESCO/EFA, Paris, October 2001, www.unesco.org/education/efa). Most figures refer to 1998, the most recent year for which education statistics are available. These figures do not reflect precise measurements but are estimates.

2. Eliminating 3-D obstacles: disability, difficulty, disadvantage

43. Overcoming exclusion and segregation inevitably entails adequate and sustained public funding. Providing education for children with disabilities may require increasing the teacher-pupil ratio from 1:30 to 1:5, or even 1:2, thus significantly increasing the cost of education. This is exemplified in two lines of argument regarding children with disabilities. The first affirms and specifies the rights which such children should have, creating an attractive conceptual framework based on equal rights and the best interests of each child, and arguing that schools should adapt to each child rather than rejecting those labelled "difficult-to-educate". The second acknowledges openly and honestly that "the reason why so many pupils with disabilities do not attend ordinary schools is that ordinary schools cannot cater for them".[37] The reason is insufficient resources - space, time, teaching staff, teaching and learning aids - which budgetary stringency and increased competitiveness are making worse. However, denials of education are rarely based on cost alone.

44. The entry of the concept of "learners with special needs" or "exceptional learners" into educationalists' vocabulary has been driven by the guilt associated with the pejorative reference to "the disabled". In the former Soviet Union, a scientific discipline was created - called *defectology* - which profoundly influenced the fate of people with disabilities. Children categorized as having "defects" early in their lives were segregated into separate institutions, never to join the mainstream, doomed to lifelong institutionalization in institutions endowed with fewer and fewer resources.[38] Against this heritage, reduced governmental allocations for all public institutions have further diminished prospects for the equal right to education for all those who are dependent on public funding, especially when additional funding is necessary to equalize educational opportunities.

45. The percentage of learners provided with additional resources varies between 1 per cent and 41 per cent,[39] making it obvious that the term has no internationally defined meaning. Differences are striking even within Europe, with Finland reporting 18 per cent, and Greece, Italy and Spain less than 2 per cent of children with special educational needs.[40] An important reason for such incomparable figures is the blurring of difference between the three Ds - disability, difficulty and disadvantage. Disability is commonly defined by reliance on the medical model, and learners with visual, hearing, physical or mental impairments are segregated into special schools or provided with teaching and learning aids in mainstream education. Learning difficulties are more difficult to define and categorize, while the blurring of disadvantage and disability brings immigrant or refugee or minority children into the purview of "disability" because they may be unfamiliar with the language of instruction.

III. PROTECTING HUMAN RIGHTS IN EDUCATION

46. Education involves more people than any other institutionalized activity and this may well be the reason for emphasizing its "hardware" at the expense of "software". There is indeed a disequilibrium between the formal institutional structure and content of schooling on the one hand and the value-orientated substance of teaching and learning on the other. The school as an institution reaches the largest number of children and young people, at their most impressionable age. Fierce disputes about the orientation and content of schooling are thus endless.

47. Alongside the rights of parents, the human rights of two principal categories - teachers and pupils - should form the core safeguards in education. Their rights are, however, often questioned by assertions that teachers are merely a factor in the production of human capital, or that children are the property of their parents. The Special Rapporteur's priority is therefore to reinforce the right to education by striving to improve the recognition and enjoyment of the key actors in its implementation and realization.

A. Applying human rights law throughout the process of education

48. The Western European heritage includes the right of the Government to deprive a child of liberty for the purpose of educational supervision. This is reflected in the European Convention on Human Rights as the duty of the child, for which the extreme mode of enforcement is the placement of a recalcitrant child in prison. The European Court of Human Rights, in interpreting that provision of the Convention, has found a human rights violation where a child was deprived of liberty "in conditions of virtual isolation and without the assistance of staff with educational training", which, the Court held, could not further any educational purpose.[41] The Court has, however, accepted that compulsory education could entail detention.[42] The European Convention on Human Rights is an old document, adopted in 1950, and thus it does not reflect either the right to education as it was subsequently defined in international human rights law nor the even more recent concept of the rights of the child. The Special Rapporteur is receiving increasing numbers of letters questioning the notion of compulsory education from the human rights perspective. She addressed this issue in her first annual report by focusing on education as a duty of the child (E/CN.4/1999/49, paras. 75-79). Education is indeed defined as a duty in some constitutions. The freedom of parents to choose education for their children may not be recognized nor the rights of the child as the subject of the right to education. The notion of home schooling is unknown in many countries, let alone regulated. Its examination through the lens of the rights of the child seems long overdue, and the Special Rapporteur will study its human rights dimensions and report to the Commission.

49. The voices of Afghan children, to be conveyed to the Special Session of the General Assembly on Children, echoes a simple message: children want to go to school. One girl said: "It is binding for every Muslim to get educated but our leaders do not allow us to go to school". A boy added: "We go to school but it is not good because we only study religious subjects".[43] The rights of the child entail the obligation of Governments, individual and collective, to eliminate obstacles impeding children's enjoyment of their right to education. The Commission on Human Rights has condemned the denial of access to education to girls as a human rights violation, insisting on "the right of women and girls to education without discrimination, the reopening of schools and the admission of women and girls to all levels of education" (resolution 1999/9). Translating into practice every child's right to education often necessitates overcoming the resistance of the adults who are the closest to children. If all parents had the best interests of their children at heart, the rights of the child would hardly be necessary. The rationale for human rights safeguards is that power is easily abused, hence safeguards against its abuse are always necessary. Children are the easiest victims of abuses of power by their parents, teachers or Governments. Therefore, alongside its resolution on the right to education, the Commission on Human Rights has reiterated its previous request for the inclusion of the rights of the child perspective in the Special Rapporteur's mandate (resolution 2001/75).

50. Education consists of two parallel processes - teaching and learning. Thus, the role of teachers is crucial in facilitating the learning process. From 24 to 26 July 2001, the Special Rapporteur attended the World Congress of Education International. At a time when the shortage of teachers in many countries has exposed the deteriorating appeal of the profession, it was gratifying to hear education defined as "the glue to hold society together" and to hear teachers speaking out for children, even while grieving for their colleagues who had committed suicide to protest the deplorable conditions of their profession.

51. Alongside parents, it is teachers who translate the abstractly defined aims and purposes of education into messages which children can recognize and internalize. With the advent of human rights education, it is teachers who are expected to adapt the orientation, contents and methods of education to the human rights requirements. And yet, *their* rights are often denied or violated. Moreover, teachers introducing human rights education may be criminally prosecuted.

B. Combating human rights violations in education

52. In resolution 2001/47 the Commission reiterated its concern at the detention and ill-treatment of people exercising their freedom of expression and asked all special rapporteurs to pay particular attention within their mandates to people who have been detained, subjected to violence, ill-treated, intimidated or discriminated against for having exercised their right to freedom of opinion and expression. In education, this is frequently the fate of university professors and students. Moreover, their victimization is often triggered by their involvement in human rights education. Reports on the victimization of university students protesting against human rights violations or the harassment of university professors involved in promoting and protecting human rights are much too frequent to be ignored. The Special Rapporteur has initiated consultations with the Special Rapporteurs on freedom of expression and on human rights defenders with a view to developing a joint response to such allegations.

53. In August 2001, the Special Rapporteur was able to finalize an inquiry into the allegations she had brought to the attention of the Government of the Gambia (E/CN.4/2001/52, para. 23). Her correspondence with the Government related to the quelling of a student demonstration in April 2000 and the outcomes of the work of the commission of inquiry established to carry out an investigation and recommend follow-up action. To her deep regret, her letters have remained unanswered. Her presence in the Gambia provided an excellent opportunity to overcome that difficulty, and the Special Rapporteur acknowledges with gratitude the cooperation extended her by the Solicitor General of the Gambia, Raymond Sock.

54. The Commission of Inquiry was established in May and completed its work in August 2000. It noted that the events of 10 and 11 April 2000 had been "clearly a turning point in the history of the Gambian nation".[44] A student demonstration, planned for 10 April 2000 to protest previous abuses by law enforcement officials against students, evolved into a major public disturbance. The students did not get the required permit, although the law enforcement agencies had apparently known that the demonstration was going to take place as they were deployed and armed. The Commission's recommendations included prosecution of individual student leaders. It called upon key law enforcement personnel to accept responsibility for causing deaths and injury, and recommended compensation for the families of the dead and injured. Unarmed students and armed law enforcement officials are impossible to perceive as

equal parties to a conflict; it is the latter that act as agents of the State and are trained and armed to do so. Much as the Special Rapporteur was pleased to be able to clarify the factual background of this case, she hopes that the difference between acts of State and actions by private individuals will become defined in future changes of Gambian "living law".

55. The most powerful form of advocacy is demonstration. A single court case which has affirmed education as a human right becomes a powerful tool of human rights education, showing that law can be made to work as a means for effectuating change and dispelling suspicions that international human rights treaties and constitutional human rights guarantees are parchment promises.

56. Human rights commissions, ombudsmen or *defensores del pueblo* have been set up in many countries. They provide a bridge between legal and political processes. Such institutions provide a wealth of approaches and experience in translating the spirit and wording of international human rights law into domestic practice. They have been particularly effective in articulating how human rights should be defined and translated into practice in the development perspective.

57. Contrary to the frequent definition of enforceable human rights as only civil and political rights, human rights commissions and children's ombudsmen tend to have much of their caseload dominated by complaints against violations of economic and social rights. For example, 44.5 per cent of the cases dealt with by the Indonesian National Commission on Human Rights in 2000 were classified as violations of the "right to welfare", while complaints regarding the right to education include the high costs of education, as well as the non-implementation of laws or policies mandating its realization.[45] Such practices underpin the conceptual universality of human rights, as well as providing a springboard for enhancing the right to education. The Special Rapporteur has requested an invitation for a visit to Indonesia, hoping to contribute to the translation of the human rights commitments of the new Government into a rights-based strategy for education.

IV. ENHANCING HUMAN RIGHTS THROUGH EDUCATION

58. The contribution of human rights in unifying fragmented sectoral strategies is exemplified in subsuming education under social rather than economic development, as has been done with international development goals.[46] This conflicts with the priority accorded education in the elimination of poverty. Education as an economic right necessitates the adaptation of schooling to facilitating subsequent economic self-sufficiency through employment or self-employment. Integrating economic, social, cultural and political facets of education is facilitated by the indivisibility and interrelatedness of human rights. Hence, such an integrated approach facilitates adapting education to key contemporary challenges, including suppression of terrorism and prevention of violence.

A. Education as keystone for self-sustaining livelihoods

59. With the benefit of hindsight, it is easy to highlight the main features of the collapsed model of schooling, which defined education as the springboard to guaranteed employment in the civil service. The whole educational pyramid could be designed according to this model as

long as the Government was the principal employer. The language of instruction was the official language of the country, primary schooling was merely a preparatory stage for further education, the right to work was defined as access to a public-sector, often lifelong, job. The collapse of that model created phenomena such as graduate unemployment, or - worse - the abandonment of schooling,[47] which visibly and painfully testifies to the need for adaptability of education. Education statistics measure only internal objectives of education, such as learning outcomes. Assessing the contribution of education to what the learners can do with it after they finish school is key to adapting it to changed circumstances, underpinned by the interrelatedness of human rights.

60. Parental motivations for sending children to school can be undermined by "a double loss: first they cannot participate in farming and herding and thus contribute to subsistence, and, second, they might be able to get a job after school but would be unwilling to accept farming again".[48] This is particularly frequent for girls: "Since girls cannot get jobs if they have only primary education, parents ask: why pay for them to sit six years in classroom, when they could be at home working?"[49] Similarly, research in South America has confirmed that, in rural areas, "a sizeable proportion of parents perceive education as irrelevant to their children's future and thus prefer that they work".[50] The cost of education encompasses, alongside direct and indirect expenses, the opportunity cost. The process of impoverishment, declining public-sector employment and "informalization" of work often replaces by child labour the jobs which parents should, but do not, have. The Commission has endorsed the Special Rapporteur's attention to the frequent inability of working children to attend school and universalized her request for information on the gap between the school-leaving age and the minimum age for employment (E/CN.4/2001/62, para. 28) by including it in its resolution 2001/29.

61. Continuing debates about the length of education that should be compulsory for all children, whether called "primary" or "basic", are particularly worrisome, as the Special Rapporteur has already pointed out many times. The draft final document for the Special Session of the General Assembly on Children, as elaborated in May 2001, referred to five years of primary schooling.[51] The forthcoming Special Session in May 2002 provides an opportunity to reinforce the linkage between the school-leaving age and the minimum age for employment, applied by the International Labour Organization as of 1921.

62. Available evidence indicates that the key to reducing poverty is *secondary* rather than primary education. The Republic of Korea, often cited as the model for the economic rationale behind its investment in education, has found that *secondary* education had the "crucial relationship with economic growth".[52] The South African Human Rights Commission has objected to eight years of schooling defined as "basic education", deeming it acceptable under the current fiscal constraints, but urging the Government to extend it to 10 years.[53] The United Nations Economic Commission for Latin America and the Caribbean (ECLAC) has found that young people have to complete *secondary* education to achieve an 80 per cent probability of avoiding poverty, and its subsequent research has confirmed that between 72 and 96 per cent of families where the parents have less than nine years of education live in poverty.[54]

63. There is more heat than light in the current debates about *vocationalizing* primary education, with some advocating this approach as a way of making education relevant and others opposing the addition of vocational purposes and contents to formal schooling. Experiences with the implementation of the governmental obligation to provide education for children rescued from intolerable forms of child labour[55] are generating necessary empirical evidence as to what works, how and why, thus providing valuable input for much-needed legal reforms at all levels, from global to local.

B. The challenge of combating terrorism and preventing violence

64. Concerns about collective and individual security underpin all traditional governmental obligations, by far predating human rights. They require *security* to encompass economic, social and societal safeguards, as mandated by international human rights law from its very creation.

65. Short-term measures addressing specific manifestations of economic recession or particular dimensions of terrorism are habitually followed by focusing on education in forging long-term approaches. In those parts of the world that are affected by current anti-terrorism strategies, this will necessitate remedying the previous neglect of education. Afghanistan has experienced such neglect, while the World Bank estimates that Armenia, Azerbaijan, Georgia and Tajikistan cannot afford universal primary education.[56] Even more importantly, considerations of "hardware", consisting of funding and schools, leads to discussing what should be taught, who should do the teaching and how should this be done.

66. Education has increasingly become part of humanitarian relief, and claims that "children have a fundamental right to receive educational services during emergencies" have been made by UNICEF.[57] UNHCR has noted that prospects of voluntary repatriation point to using the curriculum and textbooks of the refugees' country of origin, with modifications "if refugees have a valid objection to some particular part of the curriculum".[58] Teaching necessitates the choice of a language, with consequences that emerge later. As has been noted for Afghan refugees, the language of instruction created "the polarization of Dari- and Pashtu-speaking refugee communities in Iran and Pakistan with little opportunity to learn each other's language is likely to have a lasting effect on social integration and nation-building inside Afghanistan".[59]

67. The Commission has postulated children's freedom from violence (in resolution 2001/75) to guide work in this area and emphasized the need to study the impact of violence on children. Although it is known that "children's violent behaviour often has its origin in adult violence to children",[60] this finding is disturbing and tends to be suppressed. Catherine Bonnet has argued that this whole subject was taboo until the 1960s because it reveals the shameful behaviour of adults.[61] The Committee on the Rights of the Child has highlighted the need to take into account children's life experiences when focusing on the aims of education, especially in international policies and programmes on education.[62] The Madrid Conference on School Education in Relation with Freedom of Religion and Belief, Tolerance and Non-Discrimination has pointed out the need to tackle "school curricula, textbooks and teaching methods".[63] Indeed, controversies regarding teaching about wars, conflicts and associated abuses occur daily,

worldwide. School textbooks have been found to have included descriptions of "Serbian aggressors" as "merciless barbarians who ran amok" in Croatia.[64] In Serbia, the same historical period was described as "enforced expulsion of the Serbian population", reminiscent of the "genocide 50 years earlier".[65]

68. The key word in recent resolutions of the Commission on Human Rights addressing the objective towards which education should be moulded is tolerance. Setting the limits of the intolerable is the first necessary step towards creating space for tolerance. The Commission then noted that no society is beyond the dangers posed by the absence of tolerance and the violence that this can breed (resolution 2000/50) and highlighted the need to address discrimination in the process of teaching and learning, including in educational curricula and textbooks (resolution 2001/29). Primary-school curricula are similar worldwide and devote the highest percentage of time in school, 28 to 49 per cent, to language instruction.[66] Too little is known about translating human rights requirements into a language that children can understand. Moreover, the messages used in language instruction may conflict with human rights education, which, if at all, becomes part of the school curriculum much later. In-school messages may conflict with out-of-school messages.

69. In most countries, domestic law protects individuals against being publicly insulted, but prohibitions of "group defamation"[67] are rare. Maligning "foreigners" can be deemed an expression of patriotism and is often a vote-winner. This has often been emphasized by the European Commission against Racism and Intolerance (ECRI), which, in the case of Denmark, has pointed out that negative stereotypes and prejudices "are promoted by public opinion leaders, including political elites from across the political spectrum".[68] Their inevitable influence on children and young people undermines human rights messages in school-based education. In addition, David Coulby has pointed out that schools and universities "are being involved in the encouragement of xenophobia as a mode of state-building".[69] Applied research into obstacles to the full enjoyment of the right to education is therefore necessary from the local to the global level, throughout the world, and the Special Rapporteur shall accord it priority in her work.

V. CONCLUSIONS AND RECOMMENDATIONS

70. All of us, as adults, share the power of affirming or negating children's right to education. Children can only have rights only if we comply with our individual and collective duties. Governmental human rights obligations, whether these guarantee public security or the right to education, require well-funded public services. The Governments' ability and willingness to raise revenue and accord priority to human rights in its distribution is key to human rights protection. Domestically, solidarity is enforced through the duty to pay tax, from which education is generally financed. Lower taxes may seem popular until they translate into inadequate protection of public safety or ruined public schools. Internationally, the universality of the right to education is premised on international cooperation so as to equalize opportunities for the enjoyment of the right to education by supplementing the insufficient resources of poor countries.

71. During economic recessions, the importance of human rights work increases, in spite of greater challenges. Globalization, much discussed in theory, has in practice demonstrated its harmful effects by globalizing the cyclical slowdown of the economy that began in the second half of 2000. Reluctance to use the "r-word" (recession) continued until the aftermath of 11 September. It is at a time of economic crisis that human rights guarantees become crucial, precisely when they are under the greatest strain. The association between the Great Depression and the subsequent affirmation of economic and social rights in the Universal Declaration of Human Rights is well known and worth recalling at this juncture.

72. Raising the global priority of education necessitates ranking its long-term benefits over short-term priorities. The human rights perspective enables the connection of issues that tend to be treated in isolation within a comprehensive legal framework that applies both domestically and internationally. The integrated conceptual framework which the human rights approach entails facilitates cross-sectoral linkages whereby education can be adapted to the goals of poverty eradication, gender equality, or the prevention of terrorism and violence.

Notes

[1] The World Bank, *The World Bank and Legal Technical Assistance: Initial Lessons*, Policy Research Working Paper No. 1414, Washington, D.C., January 1995.

[2] Myrdal, G., *The Challenge of World Poverty: A World Anti-Poverty Programme in Outline*, New York, The Penguin Press and Pantheon Books, 1970, p. 17.

[3] A joint statement by Koichiro Matsuura (Director-General of UNESCO), James Wolfensohn (President of the World Bank), Thoraya Obaid (Executive Director of UNFPA), Carol Bellamy (Executive Director of UNICEF), and Mark Malloch Brown (Administrator of UNDP) entitled "For 113 million children, school would be a good start" was published in the International Herald Tribune on 5-6 May 2001.

[4] *The Dakar Framework for Action, Education for All: Meeting Our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000*, UNESCO, 2000, para. 19.

[5] *2001 Monitoring Report on Education for All*, UNESCO/EFA, Paris, October 2001 (www.unesco.org/education/efa).

[6] The *2001 Monitoring Report on Education for All* has noted that "the existence of large numbers of over-aged pupils must not prevent access to school for those of official school age and thereby delay the achievement of UPE goals". Dismissing over-aged children from school or precluding their enrolment would seem a particularly inappropriate remedy as it would remove the problem from the education sector without solving it, and increase the numbers of illiterate adults.

[7] Constitutional Court of South Africa, *Minister of Education v. Doreen Harris*, Case CCT 13/01, 5 October 2001.

[8] UNESCO, "A summary statistical review of education in the world, 1960-1982", document ED/BIE/CONFINTED 39/Rev.1, July 1984.

[9] UNESCO data show that the percentage of children aged 6-11 enrolled in primary school declined between 1970 and 1985 from 95.1 to 90.0 per cent in Belgium, from 90.6 to 85.8 per cent in France, from 97.3 to 89.9 per cent in Greece, from 93.2 to 88.7 per cent in Ireland, from 87.9 to 78.2 per cent in Italy, from 90.8 to 79.1 per cent in the United Kingdom, and from 100.0 to 95.0 per cent in the United States.

[10] Tanzi, V. and Schuknecht, L., *Public Spending in the 20th Century: A Global Perspective*, Cambridge University Press, 2000, p. 184.

[11] United Nations, *1985 Report on the World Social Situation*, New York, 1985, Sales No. E.85.IV.2, p. 34.

[12] This seminar was part of a series entitled "Structural Adjustment: 20 Years is Enough?", organized by Globalization Challenge Initiative, Integrated Social Development Centre, Centre for Private and Public Cooperation, ActionAid and Initiative for Policy Dialogue, in Washington D.C., from 23 to 26 April 2001.

[13] "The World Bank and user fees in health, education and water", *World Bank Issue Brief*, September 2001, www.worldbank.org.

[14] Perkins, G. and Yemtsov, R., *Armenia: Restructuring to Sustain Universal General Education,* World Bank Technical Paper No. 498, Washington D.C., March 2001, p. 11.

[15] These are Uganda (24 March 2000), Burkina Faso (25 May 2000), Tanzania (1 October 2000), Mauritania (13 December 2000), Bolivia (1 March 2001), Nicaragua (13 September 2001), Honduras (27 September 2001) and Mozambique (1 October 2001).

[16] The countries whose PRSPs are scheduled for review by the Executive Boards of the World Bank and the International Monetary Fund are Benin, the Central African Republic, Chad, Georgia, Ghana, Guinea, Guyana, Kenya, the former Yugoslav Republic of Macedonia, Mali, Rwanda, Tajikistan and Zambia.

[17] IMF/World Bank, Guidelines for Joint Staff Assessment of a Poverty Reduction Strategy Paper, 18 April 2001, www.worldbank.org/prsp.

[18] The first post-Dakar assessment of progress noted that 66 countries responded to UNESCO's query regarding national plans, with 41 countries stating that they had such plans, out of which 39 had been prepared before the Dakar Forum. *2001 Monitoring Report on Education for All*, UNESCO/EFA, Paris, October 2001 (www.unesco.org/education/efa).

[19] Concluding observations of the Committee on Economic, Social and Cultural Rights: Honduras, E/C.12/1/Add.57 of 21 May 2001, para. 34.

[20] Concluding observations of the Committee on the Rights of the Child: Mauritania, CRC/C/15/Add.159 of 12 October 2001, paras. 45 and 14.

[21] Communiqué from High-Level Group on Education for All, First Meeting, UNESCO, Paris, 29-30 October 2001, www.unesco.org/education/efa, para. 10.

[22] IMF-World Bank Development Committee, "Education for dynamic economies: Accelerating progress towards Education for All (EFA)", Paper prepared by the staff of the World Bank, DC/2001-0025, 18 September 2001.

[23] IMF-World Bank Development Committee, "Recent trends in the transfer of resources to developing countries", DC/2001-0022, 21 August 2001.

[24] "EU agrees on joint aid target of 0.7 per cent", *Development Today*, No. 17-18/01, 9 November 2001.

[25] World Trade Organization, Negotiating proposal for education services: Communication from New Zealand, S/CSS/W/93 of 26 June 2001.

[26] World Trade Organization, "Higher (tertiary) education, adult education, and training: Communication from the United States", S/CSS/W/23, 18 December 2000.

[27] The 4-A scheme structures governmental human rights obligations stemming from the right to education into making education available, accessible, acceptable and adaptable (E/CN.4/1999/49, paras. 51-74; E/CN.4/2000/6, paras. 32-65; E/CN.4/2001/52, paras. 64-65).

[28] International Labour Organization, *Equality in Employment and Occupation. General Survey by the Committee of Experts on the Application of Conventions and Recommendations*, 75th session, 1988, Report III (Part 4 B), para. 33.

[29] Ohsako, T. (ed.), *Violence at School: Global Issues and Interventions*, International Bureau of Education, UNESCO, Paris, 1997, pp. 40 and 48.

[30] Commission on Human Rights - Analytical report of the Secretary-General on internally displaced persons, E/CN.4/1992/23 of 14 February 1992, paras. 70-71.

[31] Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, report on the prevention of discrimination (prepared by the Secretary-General), E/CN.4/Sub.2/40 of 7 June 1949, paras. 17 (c) and 177.

[32] Sub-Commission on the Promotion and Protection of Human Rights, Child domestic workers in Benin, Costa Rica and India. Submission by Anti-Slavery International to the twenty-fifth session of the Working Group on Contemporary Forms of Slavery, Geneva, 14-23 June 2000.

[33] Ammon, C.D., *Study of Discrimination in Education*, United Nations, New York, Sales No. 1957.XIV.3, August 1957, p. 10.

[34] United Nations, *The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress* by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights, Publication E.75.XIV.2, New York, 1975, para. 68.

[35] The Dakar Framework for Action, *Education for All: Meeting Our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000*, UNESCO, 2000, para. 7 (v).

[36] UNICEF data for Afghanistan, accompanied by a cautionary remark that they refer only to a part of the country, place girls' gross enrolment in primary education in 1995-1999 at 5 per cent. (UNICEF, *The State of the World's Children 2001*, p. 90).

[37] Hegarty, S., *Educating Children and Young People with Disabilities. Principles and the Review of Practice*, UNESCO, Paris, [undated], p. 49.

[38] Mental Disability Rights International, *Children in Russia's Institutions: Human Rights and Opportunities for Reform*, Washington D.C, February 1999, p. 9.

[39] *Education at a Glance: 2001 OECD Indicators*, Paris, 2001, p. 174.

[40] European Commission, *Key Data on Education in Europe 1999/2000*, Office for Official Publications of the European Communities, Luxembourg, 2000, pp. 141 and 149.

[41] European Court of Human Rights, *Bouamar v. Belgium*, Judgement of 29 February 1988, A-129.

[42] European Court of Human Rights, *Nielsen v. Denmark*, Judgement of 28 November 1988, A-144.

[43] Save the Children, *Afghanistan's Children Speak to the UN Special Session, 19-21 September 2001.*

[44] *Report of the Commission of Inquiry into Public Disturbances of 10 and 11 April 2000,* August 2000, p. 44.

[45] The National Commission on Human Rights Indonesia, *Annual Report 2000*, Jakarta, 2001, pp. 69 and 226.

[46] The *operationalization* of international development goals has subsumed universal primary education under social development, suggesting as indicators net enrolment in primary education, completion of 4th grade and the literacy rate of people aged 15 to 24. "Measuring development progress: A working set of core indicators", www.oecd.org/dac/indicators/htm/list.

[47] The term *déscolarisation* captures the visible phenomenon of diminished school enrolments, associating it with its chain of causation, in which diminished public funding for schools has made them unattractive because of the poor quality of education provided therein, while the lack

of incentives for schooling (civil-service employment) has further diminished the appeal of schooling. In West Africa, this phenomenon was described by Marie-France Lange in *L'école au Togo: Processus de scolarisation et institution de l'école en Afrique*, Éditions Karthala, Paris, 1998, pp. 237-296.

[48] Hagberg, S., *Burkina Faso: Profiles of Poverty*, Sida, Stockholm, June 2000, p. 38.

[49] Jackson, T., *Equal Access to Education: A Peace Imperative for Burundi*, International Alert, London, June 2000, p. 29.

[50] Salazar, M.C. et al., *Child Work and Education. Five Case Studies from Latin America*, International Child Development Centre, UNICEF/Florence and Ashgate/Aldershot, 1998, p. 148.

[51] Preparatory Committee for the Special Session of the General Assembly on Children, Second revised draft outcome document: A world fit for children, Revised draft text submitted by the Bureau of the Preparatory Committee, A/AC.256/CRP.6/Rev.2, 17 May 2001, para. 32.

[52] The Ministry of Education, *The Development of Education: National Report of the Republic of Korea*, Seoul, September 1996, p. 1.

[53] South African Human Rights Commission, "The right to education", Policy Paper No. 2, www.sahrc.org.za.

[54] Economic Commission for Latin America and the Caribbean, *The Equity Gap: Latin America, the Caribbean and the Social Summit*, Santiago de Chile, 1997, p. 116; *Equidad, desarrollo y ciudadanía (Equity, Development and Citizenship)*, Santiago de Chile, 2000, p. 72.

[55] The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour outlaws work likely to harm the health, safety or morals of children, encompassing all children up to the age of 18, and mandates the provision of education to all children removed from the worst forms of child labour. It was adopted on 17 June 1999 and came into force on 19 November 2000. By November 2001, it has been ratified by 108 States (www.ilo.org).

[56] Vandycke, N., *Access to Education for the Poor in Europe and Central Asia. Preliminary Evidence and Policy Implications*, World Bank Technical Paper No. 511, Washington D.C., June 2001, p. 28.

[57] UNICEF, *Education in Emergencies. A Basic Right ... A Development Necessity*, UNICEF, New York, undated, p. 3.

[58] UNHCR, *Refugee Children: Guidelines on Protection and Care*, Office of the United Nations High Commissioner for Refugees, Geneva, 1994, p. 113.

[59] Rugh, A.B., *Education for Afghans. A Strategy Paper*, Save the Children and UNICEF Afghanistan, Peshawar/Islamabad, July 1998, p. 33.

[60] International Child Development Centre, Children and Violence, *Innocenti Digest No. 2*, Florence, September 1997, p. 15.

[61] Bonnet, C., *L'enfant cassé*, Albin Michel, Paris, 1999.

[62] Committee on the Rights of the Child, General comment 1 (2001): The aims of education, CRC/GC/2001/1 of 17 April 2001, paras. 2-3.

[63] Final Document of the International Consultative Conference on School Education in Relation with Freedom of Religion and Belief, Tolerance and Non-Discrimination, Madrid, 23-25 November 2001, para. 6 (www.unhchr.ch).

[64] Pingel, F., *The European Home: Representations of 20th Century Europe in History Textbooks*, Council of Europe, Strasbourg, September 2000, p. 87.

[65] Gachesha, N. and others, *Istorija za III razred gimnazine prirodno-matematickog smera i IV razred gimnazine opsteg i drustveno-jezickog smera* (History for the 3rd grade of secondary school of the Natural Sciences-Mathematics orientation and 4th grade of secondary school of the General and Social Science-Linguistics orientation), Secretariat for Textbooks and Teaching Tools, Belgrade, Eighth Edition, 2000, pp. 274 and 178.

[66] UNESCO/IBE, *World Data on Education: A Guide to the Structure of National Education Systems*, Paris, 2000, pp. 170-175.

[67] Jones, T.D., *Human Rights: Group Defamation, Freedom of Expression and the Law of Nations*, Martinus Nijhoff Publishers, The Hague, 1998.

[68] European Commission against Racism and Intolerance, Second Report on Denmark adopted on 16 June 2000, CRI (2001) 4, 3 April 2001, para. 28.

[69] Coulby, D., "Education in times of transition: Eastern Europe with particular reference to the Baltic states", in Coulby, D. et al. (eds.), *Education in Times of Transition. World Yearbook of Education 2000*, Kogan Page, London, 2000, p. 17.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Report submitted by Katarina Tomaševski,
Special Rapporteur on the right to education**

**Mission to the United States of America
24 September-10 October 2001**

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Executive summary

The Special Rapporteur on the right to education visited the United States of America from 24 September to 10 October 2001. Her mission gained new significance in the wake of the attacks of 11 September. Increased recognition of the need for "federalization" of and allocations for the protection of public security signal an important paradigm shift, whose impact on translating numerous commitments to provide excellent education to all children into a reality is, as yet, not known.

Key issues included progressive realization of the right to education, with attention to its enjoyment without discrimination, experiences with its legal enforcement, and the linkage between domestic and foreign policy. In Washington D.C., Mississippi, Kansas and New York, the Special Rapporteur met with a large number of actors in the fields of education and human rights, and her mission also included visits to schools.

The origins of public schooling lie in the common school model of the nineteenth century, a concept initiated as a practical exercise in all-inclusive schooling and a promising means of promoting economic self-sufficiency. The degree to which "common schooling" was successfully provided to all children was not matched, however, by all-inclusiveness, both were later addressed by the civil rights movement of the 1960s. Addressing the inter-generational transmission of privilege and disadvantage remains a challenge, evidenced in inequalities in education, economic exclusion and disparities in funding. The Special Rapporteur's visits to schools in Mississippi and New York were a reminder that child poverty remains a serious problem in the United States. The importance of the human rights approach is further underscored by a visible racial and gender profile of economic exclusion.

As domestic policy shapes the fate of education at home, the prominent role of the United States in international policy-making has transposed many local issues to the global level. The very problems which dominate the global agenda are also found in the United States. These range from the necessity to address the import and importance of gender, to the fiscal ramifications of the right to education, as well as the distinction between education as a free public service and a freely traded service.

The interplay of local autonomy over and disparate financing for education, lack of equal rights guarantees in the form of human rights correctives, and the fate of public education at the discretion of political processes and subsequent budgetary commitments sets a difficult stage for the full realization of the right to education. Moreover, the lack of recognition of the rights of the child prevents children from being treated as the subject of the right to education.

The revival of the common-school ideal seems particularly pertinent in the aftermath of 11 September. With the economic recession aggravated by the war effort, historical parallels are pertinent, especially the strong support of the United States for economic, social and cultural rights in the Universal Declaration of Human Rights, following the Great Depression and the Second World War.

Introduction

1. The events of 11 September profoundly affected the Special Rapporteur's visit to the United States from 24 September to 10 October 2001. Her view that human rights work should not be postponed until circumstances improve was widely shared and the mission proceeded as planned, although its import was altered. In New York City, she visited Styvesant High School on 10 October, the first day it had re-opened after 11 September, to meet the Chancellor of the New York City Board of Education, Harold Levy. Ground zero, a mass grave in the midst of the financial district, is nearby and many students and their teachers had watched the carnage of 11 September as it unfolded. To resume teaching and learning in a wounded country required teachers throughout the United States to try to explain what had happened and then to cope with the children's proverbial question, "why?". How does a teacher respond to a sobbing child asking: "Why do they hate us so much? Why?" In Washington D.C. thousands of people, mainly students, held a peace march and rally on 29 September, a week before the bombing of Afghanistan started, under the slogan "War is not the answer".

2. The mission was coloured by the traumatic and transforming events in the United States and these gave it a sharper human rights focus. The Special Rapporteur's request of 2 May 2000 for an invitation to visit the United States had singled out as key issues the enjoyment of the right to education without any discrimination, experiences with its legal enforcement, and the linkage between domestic and foreign policy. These provided the framework for the mission, whose preparation was, even before 11 September, an immensely difficult logistical exercise owing to the fragmented responsibilities for scheduling various parts of the mission. The Office of the High Commissioner for Human Rights in New York organized meetings in Kansas and Mississippi and the Special Rapporteur is deeply appreciative of its helpfulness and efficiency. New York City was coping with its human loss with a determination to resume normalcy without hiding pain and grief. Under virtually impossible circumstances, all arrangements were made by the Centre for Economic and Social Rights and the New York University Institute for Education and Social Policy. The Special Rapporteur acknowledges her debt of gratitude for all their help.

3. The mission began in Washington D.C. with meetings at the State Department, USAID, the Departments of Education, Justice, Labour and the Treasury as well as the Office of the United States Trade Representative, from 24 to 30 September. The United Nations Information Centre should have organized meetings at Congress and the Supreme Court but failed to do so. On 1 October, the Special Rapporteur met with members of the State Board of Education and the Commissioner for Education in Topeka, Kansas. From 3 to 5 October she was in Mississippi, meeting in Jackson with members of the Senate and House Committees on Education and the Superintendent for Education. Then she travelled to the Mississippi delta, to visit schools in Benoit and Leland districts. She is grateful to the Department of Education for the excellent organization of her visit to Mississippi. Her mission ended in New York City, where she met with the Chancellor and Executive Secretary of the Board of Education and had a unique opportunity to discuss the potential of the right to education with those who are directly affected - schoolchildren and youth activists, teachers and mothers, organizations vindicating the right to education before courts, scholars and campaigners who are exposing and opposing its denial and violation.

4. The Special Rapporteur sent her draft report to the Government of the United States on 17 October 2001, with an agreement that comments would be sent her by 6 November 2001 so that she could finalize her report. She received the comments on 4 December 2001 in the form of an interim reply, which enabled her to finalize her report. As the interim reply has raised questions that necessitate additional correspondence, her view that a mission report should constitute the beginning of a process rather than a self-contained activity (E/CN.4/2000/6, para. 3) has been validated and she is looking forward to continued dialogue.

I. THE CONTEXT: AFTERMATH OF 11 SEPTEMBER

5. The United States had not suffered casualties from an external attack on the mainland since 1812. War was something that happened elsewhere. Then, 11 September changed everything. The term "homeland defence" entered the vocabulary. Flags and banners hung from overpasses, houses and balconies. Agonizing debates about the horrendous cost of having privatized security for airports and airlines brought into focus governmental human rights responsibilities. Calls for the replacement of underpaid and undertrained private security personnel with public service personnel ensued. As with education, *federalization*, the expansion of federal legislation, was seen as the key to "the increased protection of individual rights and freedoms".[1] The rationale for increased governmental spending to guarantee public safety was not only clearly understood but also fully accepted. Previous assertions that human rights could be protected without cost lost their appeal.

6. Public education events were being planned from the White House, aimed at "educating a new generation of Americans on what war is all about".[2] That adults need to consider the impact of their reactions on children is well known as an abstract postulate, but it is rare that children are asked how they understand specific events or statements. Rather, it is a task routinely allocated to their teachers. In the aftermath of 11 September, teachers' tasks became even more challenging than usual.

7. Individuals as well as countries tend to remember the pain they have suffered, not the pain they have inflicted on others, making the self-perception of victimization one-sided. History textbooks epitomize what David Tyack calls "the pedagogy of patriotism",[3] rarely describing abuses committed by one's own government against populations of other countries or the people in one's own country, although history abounds with such examples. An early United States Supreme Court case, which affirmed parental rights in education,[4] revolved around the prohibition of teaching any subject in a language other than English. The background involved a ban on teaching in German, triggered by anti-German hysteria after the First World War. For many, the victimization of Arab Americans, Muslim Americans and Sikh Americans after 11 September evoked memories of the internment of 120,000 Japanese Americans (then referred to as "people of Japanese ancestry") following the attack on Pearl Harbour. The country's self-perception of victimization had led to the collective victimization of its citizens of Japanese ancestry. The United States Government apologized five decades later, providing compensation to the victims.[5]

8. Xenophobia may seem paradoxical in a population the vast majority of which consists of immigrants, but complex and often irrational human reality reminds us that shock, fear and anger easily lead to scapegoating. The human rights safeguards developed during the past six decades

forbid collective as well as individual victimization on the grounds of ethnicity, origin and/or religion. Moreover, governmental human rights obligations also include the prevention of scapegoating. Indeed, less than one year ago, Congress adopted the Wartime Violation of Italian American Civil Liberties Act, emphasizing the need to "discourage the occurrence of similar injustices and violations of civil liberties in the future".[6] Resort to the language of war in the aftermath of 11 September raised fears that violations of civil liberties would ensue. Inquiries about foreign students, especially those "of Middle Eastern origin", targeted colleges and universities. As proposals to broaden the student tracking system ensued, so did concerns about tightened migration controls and the fate of hundreds of non-citizens detained for migration offences. The uncertainty as to which human rights protections were applicable was amplified by assertions that the United States was at war without legally required notification of derogations from its international human rights obligations.[7] The Special Rapporteur is following up on developments subsequent to the end of her mission through correspondence with the Government of the United States.

II. HISTORICAL BACKGROUND AND CURRENT INITIATIVES

9. History gives us perspective on the present. Many facets of education in the United States today would be incomprehensible without a knowledge of its history. There is a long history of free public education in the United States, by far predating the emergence of human rights. The separate development of education and human rights contributed to their treatment as unrelated. The use of the term "right to education"[8] is rare, although the United States was instrumental in securing the affirmation of economic and social rights in the Universal Declaration of Human Rights. Eleanor Roosevelt symbolized the link between the Great Depression and the subsequent commitment of the Government of the United States to economic and social rights. That aspect of United States heritage is worth recalling at a time of economic recession and a major war effort in 2001.

A. The heritage of free public education

10. Nineteenth century initiatives aimed at institutionalizing education were driven by the common school ideal, aimed at forging a nation out of a variety of immigrants. The popular image of the United States as the melting pot vividly illustrates what the common school was expected to accomplish. It was to be all-inclusive and combine two distinct purposes, economic self-sufficiency and religious instruction.

11. It was deemed cheaper to educate and train people for economic self-support than to guard them in perpetual pauperism. The State of Virginia introduced compulsory apprenticeship in 1643 for "orphans, poor children, illegitimate children, and mulattoes born of white mothers".[9] Its rationale was depicted in 1676 by Virginia's Governor, who lamented difficulties in governing a population which was "poore, endebted, discontented and armed".[10] The State of Massachusetts enacted the first law mandating compulsory education in 1647, slanting it towards religious instruction so as to counter "one chiefe project of that ould deluder, Satan, to keepe men from the knowledge of the Scriptures".[11] Public schools were financed by local taxes and education was provided free of charge to all school-age children. These two defining features - local financing and local control of education - have continued ever since.

12. Free public schooling did not encompass evenly the whole population. Black and Indian children were excluded. Nor did it embrace the whole country. The north led in the nineteenth century and the south followed in the twentieth century. In the aftermath of the 1954 *Brown v. Board of Education* judgement, some southern states allowed white parents to withdraw their children from racially mixed schools, moving away from the common school ideal.

13. Although school districts and individual states have foremost decision-making powers and corresponding responsibilities in education, the Federal Government plays an important role when it chooses to do so. Federal funding encourages and facilitates change in the chosen direction,[12] and federal enforcement powers keep education within the law-and-policy framework. The Federal Government provides funding for education through hundreds of federal programmes involving 39 federal agencies.[13] The Department of Education, created as late as 1979 and threatened by abolition in the 1980s,[14] is seen by many as a grant-giving agency. The relations between federal and states' authorities have been analogized to relations between donor and recipient, with Gary Orfield noting that federal funding "just becomes general aid and part of local politics of distributing resources and jobs".[15]

B. Changing Administrations, changing priorities

14. In the 1960s, the principal targets were inequalities in education. The movement towards racial desegregation highlighted race. Knowledge about intergenerational transmission of privilege and disadvantage added poverty because the pattern was not colour-blind. The United States Supreme Court, by its historic *Brown v. Board of Education of Topeka* judgement, triggered the pursuit of racially integrated schooling but refrained from tackling poverty. Race was addressed by civil rights litigation and law reform. Poverty was tackled by federal subsidies. The 1964 Civil Rights Act prioritized education, as did the 1965 Elementary and Secondary Education Act. The latter reinforced civil rights guarantees by mandating federal aid to children from poor families and conditioning it on desegregation.

15. These efforts floundered because race and poverty were two sides of the same coin and could not be disentangled. Efforts to amplify racially inclusive schooling at the bottom of the educational pyramid included "bussing", whereby children were transported from one school into another to implement desegregation. Forty years later, the Civil Rights Division of the Department of Justice is still involved in more than 200 desegregation cases, as well as monitoring desegregation orders in 500 school districts.[16] The rationale behind desegregation was to replace racially segregated schools by all-inclusive ones. All learners would be together and the additional costs of compensating the previous marginalization of non-white learners (and their parents and grandparents) would be spread throughout the education system. Mandatory desegregation was not accompanied by additional resources, however, resulting in what became known as "the white flight". White-and-wealthy families abandoned cities for suburbs, leaving poor non-white children in poor inner-city schools. Economic exclusion replicated previous racial exclusion.

16. *Schools in inner-city ghettos exhibit a panoply of problems that a well-designed and* well-funded education system could solve. Race and poverty are interlinked with early childbearing and the consequent difficulties in making ends meet for single mothers and their

children. Single motherhood and feminization of the teaching profession make it difficult to deal with boys and necessitate a double conceptual shift: from sex to gender,[17] and from suppressing violence to also tackling its causes.[18]

17. Schools might have been enabled to tackle rather than merely reflect all these problems were it not for the switch of attention from equality to excellence in the 1980s. Excellence has remained prioritized ever since. What was termed "the public school monopoly" over education was perceived as an obstacle to the international competitiveness of the United States. The previous common school ideal - free, public and all-inclusive education - was replaced by an emphasis on improving the performance of individual schools and students, on finding alternatives to public schools rather than improving them. The goal of inclusiveness was displaced by selection and segregation.

18. The confluence of recurrent economic crises in the period 1973-1983 and concerns about the decline of economic wellbeing within the United States altered priorities for education. In 1983 the National Commission on Excellence in Education conveyed an alarmist message of doom-and-gloom,[19] which became the harbinger of change. Half a million copies were distributed, commentaries emerged in 700 articles in 45 newspapers.[20] Education was blamed for under-performing, thereby hindering United States competitiveness. Improved educational performance was to be hastened by testing, rewarding success and penalizing failure. The 1960s were forgotten and the educational performance of individual students, schools and school districts was de-linked from parental education and income. An implicit message was that those who failed to measure up to rising in-school criteria had only themselves to blame.

19. The contrast between high and low educational attainment within the United States is striking. A counterpoise to high numbers of patents and scientific publications are the results of the OECD 1995 *Adult Literacy Survey*. It revealed that 20.3 per cent of employed youth aged 16-24 could barely add two numbers together, while in Germany this was the case with merely 2.3 per cent.[21] The absence of all-encompassing good quality schooling in the United States is reflected in such embarrassing statistics. The 2001 OECD survey of the outcomes of learning prompted the Secretary of Education, Rod Paige, to note: "we have more kids scoring at the highest level ... but we also see that we have more kids at the lowest level".[22]

C. The first initiatives of the new Administration

20. On 23 January 2001, just three days after his inauguration, President Bush sent to Congress his initial proposal for education reform, emphasizing education as his first priority and naming his initiative "No child left behind". Negotiations for education reform began immediately. The House and Senate adopted different blueprints[23] and proceeded to meetings of Senate-House conferees to reach a common draft, which was interrupted on 11 September. The domestic legislative resumed two weeks later. Public opinion revealed opposition by 63 per cent to postponing education reform due to the "war on terrorism"[24] but the education bill had not been adopted by the time the present report was finalized, on 10 December 2001.

21. The House version of the education reform bill promised tripling federal funding for education, but the President's proposal diminished this to an increase of less than 10 per cent.[25] The budget surplus which would have facilitated increased spending turned out to have

been spent. The Tax Relief and Economic Recovery Act of 2001, with its widely publicized $1.350 billon tax cut over the coming decade, committed the Government to diminished revenue, which inevitably clashes with plans to increase allocations for education. Economic recession and revenue losses generated by tax cuts triggered announcements of spending cuts by individual states even before 11 September. States' education budgets were cut in its aftermath by an estimated $11.3 billion.[26] Nevertheless, President Bush announced that "Congress doesn't need to spend any more money. What they need to do is cut taxes."[27]

22. As a result, one key lever for reforming education - significantly increased federal funding - does not seem to be imminent. Another lever, enforcement of constitutional and legal human rights guarantees, does not seem to constitute a priority. An emphasis on freedom from federal controls in the current education reform raises concerns about the fate of this lever insofar as federal controls embody human rights safeguards.

III. INTERFACE BETWEEN FOREIGN AND DOMESTIC POLICY

23. International human rights law defines neither the aims and purposes nor the governance and contents of education in the United States.[28] The key factors shaping both education and human rights are domestic. The prominent role of the United States in international policy-making on both education and human rights transposes key domestic controversies to the global level. Numerous domestic laws and policies have been created to respond to problems in other countries and these can be used as a surrogate yardstick for assessing United States performance. Similar problems exist whether one is dealing with federal funding for individual states within the United States or with United States aid to other countries. Conditioning aid by particular purposes and standards raises problems regarding states' rights within the United States and States' sovereignty internationally, as does setting high standards without contributing funding sufficient to attain them.

24. Although civil and political rather than economic and social rights are encompassed by the prevalent United States definition of human rights, women's rights, trade union freedoms and minority rights form part of United States foreign policy. As the right to education pertains both to civil and political, and to economic, social and cultural rights, quite a few of its components form part of international legal obligations of the United States. Resource allocation, key to economic and social rights, can be examined by focusing on governance. Defined as the exercise of political power and/or "the relationship between the ruler and the ruled",[29] this notion corresponds to the Special Rapporteur's definition of human rights as safeguards against abuse of power and enables the examination of fiscal allocations for education. Both internationally and domestically, resource allocation is governed by political decision-making, thus necessitating an inquiry into optimal human rights correctives for this process. There are numerous obstacles to be overcome, ranging from the variety and complexity of separate policies within *foreign policy*, to constant questioning of the role of the Government with inevitable consequences for governmental human rights obligations, to dissociation of human rights and education, or uncertain affiliation between human rights and democracy.

25. United States human rights policies have changed in the past three decades[30] and have been supplemented by separate policies on democracy and associated assistance.[31] Links between human rights (or democracy) and economic development have not been elaborated,

however. This was not so earlier. In 1992, the Security Council highlighted "the non-military sources of instability in the economic, social, humanitarian and ecological fields".[32] The initial rationale for United States aid did so even more forcefully. The Marshall Plan, which has become a household word, prioritized the elimination of hunger, poverty, desperation and chaos "to permit the emergence of political and social conditions in which free institutions can exist".[33] The rationale whereby hunger, poverty, desperation and chaos have to be eliminated *before* free political institutions could be established subsequently disappeared from United States policy.

26. USAID notes that it is "spending less than one-half of 1 per cent of the federal budget"[34] and the State Department has added that foreign assistance programmes "have ultimately put more dollars into the pockets of American taxpayers than they have ever taken out".[35] This trend is likely to be reinforced by moulding aid to create "better markets for U.S. exports" abroad and/or to "better respond to U.S. national interests".[36]

27. An optimal model for education encourages private as well as public schooling, localized schooling systems and diversified sponsorship of schools, closely resembling the domestic model as is typical in aid. The domestic priority for testing is reflected in the attention to student-level outcomes in USAID policy. The human rights rationale necessitates asking what education is *for* and moulding it to facilitate economic self-sustainability, which is key to poverty eradication. For girls in rural areas, incentives for enrolment in school and its completion are strongly influenced by their subsequent ability to own land and obtain bank loans. These can be hindered by social and cultural norms which can be changed through education. Voluminous research-based literature has demonstrated the risk of boys and men being driven towards soldiering because education failed them, rather than offering a pathway for securing their livelihoods. Such considerations have obtained additional importance in the immediate aftermath of 11 September. The orientation and contents of education have been brought into focus with evolving plans for a "global crusade against terrorism", promising to overcome the previous neglect of abusing education to promote hatred, violence, warfare or genocide (E/CN.4/2001/52, paras. 46-47).

28. The annual State Department report on human rights encompasses all countries in the world except the United States. In the past 24 years, it has provided a changing inventory of human rights violations. Although the listing of rights does not include the right to education, reviews of countries' human rights performance *do* highlight its important facets. The 2001 report has emphasized denials of access to education to girls and to children who are too poor to afford school fees.[37] The USAID inventory of categories deprived of access to education alternates between vulnerable, disadvantaged and marginalized groups, the poor, girls and women.[38] Vulnerability and poverty are identified as factors contributing to trafficking in people, which is defined as an abuse of human rights, necessitating educational and economic opportunities as key preventative measures.[39] Such links between reported abuses and measures for their prevention underpin global initiatives to mainstream human rights in international cooperation.

A. The import and importance of gender

29. The congressionally mandated attention to gender in United States aid seems to be interpreted as if it said "women" rather than "gender".[40] Increased access to education for girls

is prioritized but when gender disparity is reversed, unequal access to education for boys is not addressed.[41] This resembles domestic policies which also prioritize access to education for girls and women in spite of the fact that female students outnumber men graduating from high school and continuing to college and university. The shift from sex to gender necessitates addressing both sexes as well as designing policies that equalize their opportunities and treatment.

30. Both domestically and globally, two facets of the gender landscape require urgent attention. The first one, girls outnumbering and outperforming boys in school, is a global exception. The second one is the rule, involving foreclosed educational opportunities for many girls and young women, who bear children much too young and have to raise them alone. The problem of children bearing children cuts across gender, religion, race and poverty and is difficult even to address, let alone solve, because the chain of causation requires tackling a range of unpopular issues. Preventing early pregnancy requires providing young people with the information, means and motivation. It routinely meets fierce opposition. Traditionally ascribed gender roles keep teenage pregnancy and single motherhood as a woman's problem and fail to solve it by directing laws and policies towards girls and women alone.

31. Premature sexuality is an issue that no society can address comfortably and confidently. Few countries have secured the best interests of the child - both female and male - in coping with it. The right of the child to information about sexuality has created endless controversies in countries where it has been conquered, always against opposition and after lengthy litigation. Internationally, the United States has been curtailing foreign aid lest it facilitate access to abortion and, domestically, advocating abstinence rather than sex education. That such advocacy hurts rather than helps is shown by the large numbers of new HIV infections and high rates of child pregnancy since "one half of adolescents in the United States are already sexually active" and consequently at risk of HIV infection and unintended pregnancy.[42]

B. Fiscal ramifications of equal rights for children with disabilities

32. The entry of disability into human rights law necessitated revising the concept of non-discrimination. People with disabilities have disadvantages resulting from their impairment. Promises of equal rights are meaningless, if not hypocritical, unless these disadvantages are eliminated. In education, this translates into higher costs of schooling resulting from teaching aids or higher pupil-teacher ratios. While the average annual cost of educating a child can be set, for example, at $4,814, for a disabled child this easily exceeds $30,000.[43] Such a five-fold increase in the cost of education is a bone of contention in the United States because funding is perceived as a zero-sum game in which additional funding for children with disabilities translates into a loss for other children.

33. The legal guarantee of free and appropriate education for children with disabilities defines governmental human rights obligations. In the United States, these tend to be seen as protections *against* rather than *by* the Government although President Harry Truman, speaking in June 1947 before the National Association for the Advancement of Colored People (NAACP), emphasized protection *by* the Government.[44] As with racial discrimination, to which President Truman was referring, the elimination of discrimination against people with disabilities requires comprehensive, costly and sustained action by the Government.

34. The role of education in the socialization of children prioritizes inclusiveness over segregation. In the famous words of the United States Supreme Court, "separate educational facilities are inherently unequal".[45] Racial segregation is difficult to eliminate, but segregation of children with disabilities is difficult even to tackle. The cost of redressing disadvantage and disability encounters continued opposition, domestically and internationally.

35. Equal rights necessitate spreading the costs of compensatory measures as broadly as possible, rather than confining them to the affected individuals or their families, individual schools or states. The "No Child Left Behind" initiative promised to increase funds under the Individuals with Disabilities Education Act (IDEA) "in order to reduce the burden that states and local districts bear in meeting the special needs of disabled students".[46] The National Education Association (NEA) noted that budgetary decisions of May 2001 marginally increased federal funding (from 15 per cent to 16.5 per cent), which remained at less than half of the promised 40 per cent federal contribution.[47]

C. Whither education: free public service or freely traded service?

36. Education can be regulated either as a service provided in the exercise of governmental authority or as a service which is sold and purchased against a price. When it is traded, education is regulated by commercial law and is sometimes referred to as a "property right". The Special Rapporteur has noted the confusion created by resorting to the term "rights" for commercial transactions (E/CN.4/2000/6 of 1 February 2000, paragraph 66). The core of human rights is jeopardized by transposing the language of rights to the sale and purchase of education. Human rights are entitlements inherent in human beings and are regulated by public rather than private law. Blurred vocabulary camouflages this legal duality, with a risk of obfuscating the boundaries between trade law and human rights law. Both domestically and internationally, concerns about the future of education as a free public service have heightened the need to reaffirm and reinforce education as a human right (E/CN.4/2001/52 of 11 January 2001, paragraphs 55-59).

37. Domestically, the dichotomy between public and private, free and for-fee schools has always been part of the educational landscape. Private education for children of compulsory school age can cost an annual $34,000, while college fees can amount to $34,000 just for tuition.[48] (For the sake of comparison, the minimum wage of $5.15 per hour amounts to an annual income of just below $11,000.) Fears about the fate of public education have been heightened by the introduction of school vouchers. They replace the right to free, good and inclusive public education by an entitlement to a subsidy, thus transforming governmental obligations to ensure availability, accessibility, acceptability and adaptability of public education for all children into an entitlement to a voucher, which represents a part of the cost of education.

38. Internationally, the United States is a key advocate and beneficiary of international trade in education services. In the 2000/2001 academic year, 547,867 foreign students contributed more than $11 billion,[49] slightly more than total annual aid from the United States ($9.6 billion in 2000[50]) and a hundred times more than USAID provides for children's basic education ($103 million[51]). There is no information as yet about the dollar value of United States educational services in more than a hundred countries where these are already being provided. The United States proposal for liberalizing international trade in education services focuses on post-

compulsory education, pledging that private education and training will supplement rather than displace public education.[52] However, USAID benchmarks for building human capacity through education include reducing "dependence of higher education on public funding".[53] Further reductions of the already insufficient funding for public education may well jeopardize the very survival of post-compulsory education as a free public service.

39. The word *public* is key to defining education as a public good or a public responsibility, or a public service. The alternate - private - is slanted towards education as a "property right", seldom differentiating between non-profit and profit-making educational institutions. Defining education in accordance with trade rules substitutes educational provision on a commercial basis for the realization of the right to education. Education statistics then portray access to education but not its cost. For children of compulsory school age, statistics depict access to school without denoting the quality of schooling, which may be so poor as to prevent children from learning. For post-compulsory education, statistics feature enrolments, seldom adding the cost for the individual and/or family and even more rarely the learners' inability to continue in the face of excessive costs.

IV. FISCAL ALLOCATIONS FOR PUBLIC EDUCATION

A. Legal enforcement versus democratic decision-making

40. The judiciary is often seen as the custodian of human rights and the image of the United States as a country of laws and lawyers enhances its importance. The interplay between three branches - legislative, executive and judicial - in resource allocation creates endless controversy. Courts are supposed to interpret law, but they also create it. Legislatures have the power of the purse but court decisions often challenge resource allocation. The executive exerts a great deal of power in implementing the law because funding formulas - exemplified by terms such as ADM (district's average daily membership), RWADA (resident weighted average daily attendance) or TWPU (total weighted pupil units) - are likely to be understood only by those who developed them.

41. The friction between equal rights guarantees and budgetary allocations, which should but often do not translate into effective entitlements, is a worldwide problem. USAID has pointed out that, in the absence of public funding, children's access to education depends on their parents' income and wealth. Hence, public funding is necessary to ensure access to education for poor children and break the intergenerational transmission of poverty.[54] Ensuring that public funding is slanted towards poverty eradication requires human rights correctives for decision-making, which is proverbially tilted in the opposite direction. Human rights guarantees are meant to impede contrary fiscal allocations and enable courts to enforce their judgements against recalcitrant legislatures.

42. An optimal constitutional guarantee of the right to education would exempt the necessary funding from political processes by making fiscal allocations for education mandatory. In practice, funding for education is discretionary. The ends specified in the form of legal guarantees cannot be met if the means made available through political processes are inadequate. A court can find the fiscal formula adopted by a legislature in breach of the Constitution but the legislature may fail to remedy that breach and the court lacks the power to enforce compliance.

Justice Douglas of the Supreme Court of Ohio, in September 2001, received a suggestion as to how the judiciary should deal with a recalcitrant legislature thus: "Find them in contempt and put them in jail".[55] A scenario where a judiciary finds a legislature in contempt of court and imprisons parliamentarians illustrates the need to address the unwillingness of key political actors to translate the right to education into fiscal allocations. The road still to be travelled towards bridging the abyss between human rights law and political decision-making is long and uphill.

43. In January 2001, a judgement by the Supreme Court of the State of New York[56] has revived hopes that the right to education may be progressing in spirit. The obligation of the State to secure for all children access to education worthy of its name has been at issue. Justice Leland De Grasse diagnosed the problem thus: only 15.5 per cent of public school pupils were white, one in eleven was a recent immigrant and unfamiliar with English, almost three quarters were eligible for free-meal programmes, that is, were categorized as poor, and 84 per cent were classified as "minority students".[57]

44. The equal right to education in New York's public schools is hampered by a funding gap: an annual $40,000 is available in suburban schools but only $4,000 in inner-city ghetto schools.[58] Inner-city schools thus cannot cope with the racial, ethnic, linguistic, religious and migration-created diversity in conditions of poverty. The initial demand to fund all school districts equally was rejected and the case has subsequently revolved around "adequacy". This term was defined to require that "the State must ensure an education to public school students that satisfies some basic minimum requirements".[59] The judgement faulted the funding formula for education which has failed to halt, let alone redress, the combined disadvantages which students and their teachers cope with. That children can be deprived of education because they are too young to vote and are easily bypassed in political decision-making highlights the rationale for children's rights, aimed at rectifying their non-existent political voice.

45. The United States Supreme Court has, however, declared taxation as well as economic and social policy as beyond its purview. It has held that raising and disbursing tax constitutes a legislative function beyond the remit of courts, and it has rationalized local control over education as "freedom to devote more money to the education of one's children", faulting other models for financing education as leading to a "comparable lessening of desired local autonomy".[60] Reconciling local autonomy and equal access to good education for all children remains a colossal challenge. Local autonomy enables parents to finance education of *their* children while refusing to finance the education of other people's children. The consequent abyss between excellent and inadequate schools pits the *localization* prevailing in the United States against *globalization*, a phenomenon also commonly associated with the United States.

B. Localization versus globalization

46. The abyss between knowledge-based and education-deprived communities is likely to increase between and within countries. Globally, the right to education is recognized and judicially enforced in many, but not all States.[61] Within the United States, the right to education is also not recognized and enforceable in all states. Local control over education and the uneven revenue base broaden and deepen disparities. Funds for public schools originate from three

levels - local, state and federal. At the local level, public schools are regularly funded out of local property taxes, making available funding dependent on the value of property in the school district. Differences in the tax base between rich and poor districts result in unequally funded schools. Individual states provide funds to each school district, generally more than half of the total. Federal funding is relatively small (about one tenth) and conditioned by specific purposes for which it is provided.

47. This localized financing of public education generates the largest budgets in the richest school districts, while the poorest districts have the smallest budgets. Available funds are thus in inverse proportion to the requirement of equal opportunity. The parents' income is closely correlated with their level of education, their race and/or ethnicity and the language spoken at home. Most children live in neighbourhoods and attend schools that reflect their parents' income and wealth status. Education is hence a mechanism for intergenerational status transfer. This conflicts with the self-perception of the United States as meritocracy, evidenced in cheerful recitals of rags-to-riches tales. There is no doubt that there are individuals whose upward mobility has broken the pattern of intergenerational status transfer. They remain the anchors of continued belief in upward mobility.

48. *Localization* rather than *federalization* produces an immense variety of schools, excellent schools alongside those in which children cannot master the three Rs (reading, 'riting and 'rhitmetic)[62] and need remedial classes if they manage to enrol in college. There is an abyss between "kids bound for Yale and kids bound for jail".[63] Because orientation and contents of schooling is determined locally, there is an endless variety in what is being taught and how. *Globalization* has deepened and broadened problems created through *localization*. The "new economy", of which information technology (IT) and financial services were supposed to be the harbinger, lost appeal in April 2000. Thousands of newly unemployed followed the burst Internet bubble and bankruptcies of dot.coms. The model had fit extremely well with the United States self-image of meritocracy, its glorification of youth culture and its belief in instant self-made millionaires. The young had led the Internet revolution, with the ability to learn and innovate - as well as a propensity towards risk-taking - inversely correlated with age. The few instant millionaires entered rags-to-riches tales, others returned to school if they could afford it.

49. The vertical division of powers impedes forging an integrated and comprehensive strategy for the public funding of public education. Because free and all-encompassing public education was introduced by individual states, their constitutions rather than the United States Constitution deal with education. Constitutional formulations vary. Some explicitly define the obligation to provide a uniform system of free and "thorough and efficient" public education, while others speak only about "adequate education". The United States Supreme Court disallowed the denial of education, pointing out that its cost would be unacceptably high. "A subclass of illiterates" would be created, with the associated costs of unemployment, welfare and crime, but the Court stressed that only a denial of "a minimally adequate education" could be challenged.[64] Litigation thus moved down one level to individual states. Many have been targeted by demands to alter budgetary allocations so as to provide education of equal, or at least minimal, quality for all children.

V. RACIAL AND GENDER PROFILE OF ECONOMIC EXCLUSION

50. The ambivalence which race engenders is evident in two co-existing phenomena. "Racial profiling" is deemed unacceptable when used by the police to transpose racial stereotypes to the likelihood of offending, like stopping people for "driving while black". Racial classifications are, nevertheless, part of official statistics. The results of the 1950 census portrayed the country as 89 per cent white and 10 per cent black. The 2000 census revealed that 12 per cent were people of South American origin, who had been statistically invisible in 1950.[65] Changing proportions of the two major categories referred to as "minorities" in popular parlance are due to have a considerable impact on the equal-rights discourse. Latin Americans are becoming more numerous than African Americans and there is a novel mixed-race category. The racial classification of Latin Americans is avoided.[66] The terms used to refer to them alter between "Latino", "Hispanic", and "Chicano", whereas "Latin American" is rarely used. The term "American" without a preceding capitalized adjective may well be reserved for WASPs (White Anglo-Saxon Protestants), a term coined by the sociologist Digby Baltzell in 1964.

51. Equalizing access to education constitutes a key human rights requirement, and attention is slanted towards enhancing access to education for previously excluded categories, such as victims of racial and gender discrimination. Legalized exclusion from education on the grounds of race or ethnicity was successfully challenged in the 1950s, but a move in the opposite direction is noticeable. For example, in 1950 the United States Supreme Court faulted the University of Texas Law School for discriminatory denial of access to non-white students,[67] only to challenge in 1996, in another case involving the same institution, its affirmative action programme, aimed at redressing the consequences of previous discriminatory exclusions.[68] The underlying law and judicial interpretations of affirmative action strive to reconcile two realms - equal rights for all individuals and structural preferences. Outcomes have changed with a changing political climate in the United States. While the thrust of jurisprudence legitimized affirmative action in the 1960s, this was reversed in the 1970s and took a further slant against affirmative action in the 1990s.

52. The contradiction between individualism and racial and/or ethnic classification illustrates how easily conflicting approaches can be pursued when people are socialized to accept them. One is likely to hear that it is un-American to treat people as members of a group rather than individuals and that affirmative action is uniquely American. Cherishing individuality is perceived to be as much American as is self-classification by collective ascription, such as African American, and the corresponding urge for differentiated treatment.

53. The language used for equalizing educational opportunities is varied and changing. "Equitable" is preferred to "equal" because "equal" tends to be interpreted to mean that everybody gets the same share. The very system of financing education impedes defining "equal" to mean additional funding for children who need to overcome disadvantages or disabilities so as to enjoy the equal right to education. A scheme of "affirmative financial action" to equalize educational opportunities would require acknowledging victims of discrimination. The preferred term for victims of racial discrimination is, however, "minorities". In New York City schools, 35 per cent of children are black, 38 per cent are Latino and 11 per cent are Asian,[69] and yet this numerical majority is referred to as "minority students". Although the previous Administration acknowledged "continued racial and ethnic discrimination

in education",[70] the new Administration focuses on disparities in learning accomplishments.[71] Different from "victims of discrimination", terms such as "minority" or "disparity" do not have a defined meaning in law, which impedes enforcement of equal-rights safeguards. Such terms also subterfuge the message of Jonathan Kozol's 1991 classic on education in the United States, entitled *Savage Inequalities*.

54. Access to school may be secured for all children but this does not mean that schools are good, and those schools that are good may not be affordable. Opting out of public schools is possible for those parents who can afford private and/or religious education. Parental choice amongst public schools is determined by their ability to afford living in a neighbourhood where schools are good. The varying quality of schools is exemplified by advertisements for the sale of family houses, which include testing scores of neighbourhood schools as an important marketing item. This process of economic exclusion flouts the common school ideal.

A. Coping with poverty: Mississippi

55. Education as a universal human right requires elevating corresponding human rights obligations to the highest possible level in order to rectify inequalities, which cumulate in time and space. Those who have had the least access to education tend to leave this heritage to the next generation. Making individual families and local communities responsible for funding education broadens the gap between haves and have-nots. Breaking this vicious circle requires governments to prioritize and equalize funding for education, to increase funding for teachers and students who are coping with poverty so as to redress disadvantages they need to overcome. Instead, seeking "high-poverty, high-performing schools"[72] makes it possible to focus on isolated cases of success against all odds.

56. Child poverty is a serious problem in the United States, as demonstrated by state-by-state estimates by the United States Census Bureau of 6 August 2001.[73] These have pointed out that one in every six children lives below the poverty line, with the highest proportion living in poverty - 26 per cent - in Mississippi.[74] There are no educational statistics on poverty. The proxy indicator is the percentage of children entitled to a free meal, 55 per cent in Mississippi and 94 per cent in Benoit, in the Mississippi delta. Racial composition is presented separately, 51 per cent black in Mississippi and up to 98 per cent in Benoit. The percentage of children entitled to free meals corresponds to the percentage of black children. The percentage of special-education children also tends to be elevated in districts where most children are poor and black (12 per cent in Mississippi, 25 per cent in Benoit).[75] The percentage of school children in single-parent families is not included in the statistics at all. The neutral term "single parent" disguises the fact that all are mothers. Schoolteachers (83 per cent of whom are women[76]) manage as they can. Attracting male or even black teachers is arduous because of low salaries and the excessive challenges that teaching in these circumstances entail.

57. Large white-owned farms are supposed to generate funding for public schools through property tax, but white children go to private, not public schools. That public schools are underfunded and tax payers none too keen to increase funding for them is a foregone conclusion. Hopes that the political decision-making process, which bestows power upon adult, white, propertied men would favour young, poor, black children and their young mothers clash with

reality. Altering funding for public education would require profound changes. Questions about options for change routinely encounter one answer: "This is how it has always been in Mississippi."

58. Endless cotton fields in the Mississippi delta are a beautiful sight for people who drive through them but also a symbol of an unaltered past and foreclosed options for the future. Children of black sharecroppers and farm labourers have few employment opportunities in mechanized agriculture. A young black girl will have "a pretty baby" while at school and become a grandmother in her thirties; incentives and opportunities to alter the intergenerational transmission of this pattern are few and it takes a great deal of courage to break the mould.

B. The cost of denying the right to education: New York City

59. Single motherhood engenders two distinct responses, whether in Mississippi or New York City. The first is condemnatory, based on the breach of the prohibition of pre-marital sex, while the second highlights single motherhood as a major determinant of child poverty. Both are punitive. If single mothers have had their children young, their level of education will be low and they will be confined to low-skilled and low-paid jobs, having to bear all the cost of raising children without another wage earner. With their mothers earning too little to afford good childcare and pre-school education, children begin formal schooling at a disadvantage. Official statistics show that 70 per cent of 3 to 5 year old children are read to aloud when their mothers have a college education, but this diminishes to 38 per cent if the mothers have not completed high school.[77] Disadvantages multiply if the mother has not completed high school, is single and Hispanic, while advantages multiply for "white children from two-parent households with family incomes above the poverty threshold and with mothers who spoke English at home".[78]

60. Different from Mississippi, much of New York City's population are migrants and are not socialized into a pattern of behaviour set a century or two ago. Mothers are in the frontline of movements for change. One explained how her organization, *Madres en Movimiento*, emerged and grew, apologizing with a shy smile for swallowing tears while speaking about efforts to tackle a multitude of problems all at once - garbage and rats and heavy truck traffic, substandard schools and uncertified teachers. Another detailed obstacles faced by New Settlements Parent Action Committee in the south west Bronx: 41 per cent of teachers are not certified, 83 per cent of school children have not learned to read in school, and the number of children referred to special education has trebled. A third one, representing Queensbridge Community in Action, has pointed out that referrals of African American children to special education exceed threefold referrals of white children, and half of black children are placed in the most restrictive setting. Twenty-eight per cent of those segregated into special education drop out, while less than 8 per cent finish school.[79]

61. The pledge of the Chancellor and the Board of Education to establish clear lines of authority to make the school system fully accountable for the performance of all children[80] has not yet been fulfilled. It is immensely difficult to discern which particular body should process what type of complaint, and even more to ascertain the amount and flow of funding through the labyrinth of educational administration. Worse, the spending cuts announced in the immediate aftermath of 11 September will aggravate solving problems for which funding is indispensable.

62. Exposure to violence belongs among the problems which do not depend on funding, but may have been aggravated in response to 11 September. In New York, school children are continuously reminded of the pervasiveness of violence as they pass through metal detectors at the school gates, have their lockers searched for guns, and hear sirens and alarms. The first person at the doorway of each public school which the Special Rapporteur visited in New York was a uniformed police officer. The *2000 Indicators of School Crime and Safety* noted that in school year 1996/97 one in 10 schools reported at least one serious violent crime and that almost one in 10 students carried a weapon to school.[81] If education is defined in the broadest sense of this term, as the sum-total of what children learn from their parents and peers, from the mass media as well as from the hugely developed advertising and entertainment industry - much of which is specifically targeted at children - in-school and out-of-school messages often conflict. Studies into violence have revealed that "youth who observe adults accepting violence as a solution to problems are apt to emulate that violence".[82]

63. Violence is a favourite topic of video games and films. The two frames of reference - reality and virtual reality - made many schoolchildren unable to differentiate between television news on 11 September and Hollywood films in which burning skyscrapers and screaming people fleeing death and destruction were created to, supposedly, entertain the audience. It is adults who help children separate fact from fiction, and children take emotional cues from their reactions.

VI. CONTROL OVER EDUCATION

64. Locally elected school boards determine education policy and the curricula of public schools, the selection of school textbooks and books for school libraries, and even plays which students can use in drama classes. The powers of school boards are routinely challenged by parents, who invoke *their* right to control the education of their children. Children have no recognized right to articulate and defend their own vision of what their education should be, while teachers acquire the protection of academic freedom only when their students are at least at the secondary level. Non-recognition of the rights of the child and constraints upon the teachers' role situate decision-making within electoral politics. Results influence, and often determine, whether children should be instructed in *what* they should think or educated as to *how* to think.

65. Reconciling decisions of school boards with parental rights generates an endless stream of court cases. In one, a mother argued that "she did not want her children to make critical judgements and exercise choices in areas where the Bible provides the answer".[83] Similar cases have highlighted extreme positions about the purpose of education. On the one hand, the United States prides itself on scientific discoveries and technological breakthroughs. On the other hand, opposition to adapting education to further development of science and technology remains fierce. The ambition of the new Administration to strengthen the quality of science instruction in elementary and secondary schools and remedy the situation where United States pupils are trailing behind other developed nations in science[84] may be thwarted by domestic politics.

A. Freedom of religion

66. Religion constitutes an immensely important issue in the United States because, differently from most Western and/or Northern countries, the majority in the United States declare themselves to be religious. The turbulent history of conflicts between different religious communities in public schooling led to the separation between Church and State in the United States Constitution. This had initially been interpreted to require that public education be secular, an interpretation subsequently reversed and further change is likely to ensue.

67. On 29 January 2001, the White House Office of Faith-Based and Community Initiatives was set up and an executive order issued, including to the Department of Education, to facilitate the provision of services by faith-based organizations. The premise is apparently that religious organizations could provide better services because they are religious, hence the Federal Government should support them financially. Another interpretation of this innovation is electoral politics: those who go to church more than once a week voted two-to-one for President Bush.[85]

68. Faith-based services are anticipated in after-school programmes for low-income children. Federal funding for educational services provided by religious organizations has been deemed by many as a departure from the constitutionally mandated separation between Church and State. The justification is that previous Administrations wrongly slanted their approach, acting "as if the law banishes religious providers and mandates rigid secularism".[86]

69. The text of the United States Constitution provides a deceptively simple recipe: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The United States Supreme Court had initially interpreted this as a separation between religion and public schooling, positing "the ideal of secular instruction and political neutrality".[87] After religion was defined to include secularism,[88] it became impossible to advocate freedom *from* religion as a counterpart to freedom *of* religion. The focus gradually shifted from the initial commitment to secularism to the equal status of religion and secularism, and to "discrimination against religion". The United States Supreme Court ruled in 1990 that students' religious groups could meet in high schools if secular groups were also meeting, adding in 1993 that church-sponsored evening meetings could be held in school if non-religious meetings were also held, and in 2001 holding that church-run student clubs could use school facilities in extended-day programmes if others were allowed to do so. Moreover, freedom-of-speech safeguards legitimized a "religious perspective" as an alternative to a "secular perspective".[89] This has facilitated the entry of religion into school activities, programmes and curricula.

70. In a much-quoted statement, the United States Supreme Court declared that "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion".[90] Its subsequent jurisprudence, however, gradually endorsed a view whereby public *schools* should influence their students to adopt particular beliefs. Local control over public education facilitates intergenerational transmission of "community values" or "cultural values".[91] There is rarely a consensus on what these values may be, hence the particular values that are chosen, defined and espoused by local education officials are often challenged by parents or teachers.

71. The worlds of science and religion are far apart. Science thirsts for empirically based knowledge, moral and/or religious beliefs involve decisions about right and wrong. Such beliefs are often used to challenge empirically based knowledge. Disentangling the two was mandated by the United States Supreme Court when it posited that the Government should avoid entanglement with religion. This recipe has not been heeded.

B. Deciding what children should learn: Kansas

72. International comparisons of learning accomplishments have started with mathematics because it is taught similarly world-wide. Learners' knowledge can be easily compared regardless of the country in which they go to school. The trend towards creating knowledge-based societies has heightened interest for such comparisons. It could be easily anticipated that geology or biology could be examined according to globally accepted definitions of what constitutes knowledge and how well it is transmitted to the young. Both would create problems for United States participants because boundaries between knowledge and belief have been blurred. Hence, evolution could become a subjective, contestable matter of opinion.[92] This is exemplified in the on-going tug of war between "creationism" and "evolutionism" in school curricula.

73. Darwin's *The Origin of Species* created a stir by demonstrating how natural selection occurs. This prompted opposition from many religious communities whose belief in design by the Creator had been shattered by Darwin's theory of evolution. United States courts became involved in 1927, when a teacher was dismissed for teaching evolution, an anti-religious doctrine positing that human beings evolved from other species.[93] (The trial was dubbed "the monkey trial".) The United States Supreme Court revisited the issue in the 1960s and a law banning the teaching of evolution was declared unconstitutional with a judicial finding that "creationism" represented a religious dogma which hampered scientific education.[94] The issue was not settled and the United States Supreme Court had to rule whether school curricula should include the theory of evolution or the biblical account of human creation, or both. The Court has upheld evolution, emphasizing the need for effective teaching of science.[95]

74. The Supreme Court's judgements are delivered far away from school boards which make decisions by majority vote; these decisions are seen as political choices. The autonomy of universities prevents such political choices from moulding the curriculum, as does respect of academic freedom, but students enter university after 12 years of schooling which was governed through such political choices and influenced by the associated advertising.[96]

75. Kansas was a target of world-wide attention when the School Board opted for "creationism" in 1999. The results of the elections for the Kansas School Board in 2000 altered its composition, making reversal of that decision possible. Decision-making involved consultations with the public, encompassing actors with opposite viewpoints, such as Kansas Citizens for Science, the Intelligent Design Network, the University of Kansas and the Creation Science Association of Mid-America. The Board appointed a Kansas Science Education Standards Writing Committee, which suggested restoring evolution in the curriculum and the majority of the Board voted in favour.[97] The fate of the school curricula may thus have been decided until the next round of elections for the School Board.

VII. CONCLUSIONS AND RECOMMENDATIONS

76. Education involves much more than the transmission of knowledge and skills. The values which education espouses might be openly endorsed or cloaked behind an apparently neutral curriculum. Nevertheless, they are part and parcel of any and all schooling, which may be slanted towards instructing children *what* to think or teaching them how to think. The powers exercised by those who decide on the values, contents and methods of education therefore ought to be subject to human rights safeguards, lest these powers be abused.

77. There have been many documented instances of abuse of schooling in various parts of the world, where "education" has promoted genocide or spawned beliefs that killing people is not only acceptable but heroic. The horror of seeing the results of such "education" on 11 September reminds us that we desist from tackling it at our own peril. Understanding that the planning of that carnage entailed setting the value of human life at naught, both for the perpetrators and for the victims, requires addressing values in the narrowest sense of this word.

78. Raising the priority of education has been promised time and again, including by the new Administration, but the long-term benefits of education are always ousted from the apex of fiscal allocations by short-term priorities. It is no coincidence that countries in which the right to education is fully guaranteed have low levels of violence, nor is it coincidental that institutionalized education began in the United States in order to make people economically self-sustaining. Both facets of education gain tremendous importance in coping with economic recession while at the same time waging a war. The human rights perspective makes it possible to connect issues that are treated in isolation within a comprehensive legal framework that applies both domestically and internationally.

79. Human rights problems are rarely confined to a single region or country. The universality of problems underpins the universality of human rights standards. The pattern of problems and their optimal solutions resonate world-wide. The very problems which dominate the global agenda are also found in the United States, such as the role of education in eliminating child pregnancy or the cost of securing the equal right to education for children with disabilities.

80. The language of rights is omnipresent in the United States. Passengers' bills of rights are routinely displayed in taxis, health insurance companies are regulated by a law which bears "patients' rights" in its title. There is a desperate need for human rights education, as this term tends to be used only with reference to other countries. Domestic vocabulary abounds with terms whose meaning is unclear (such as "minority") or changeable (such as "discrimination") or as yet undeveloped (such as "gender"). Many grievances are couched in the language of rights but there is little knowledge of the human right to education, human rights in education or enhancing human rights through education. When the language of rights is used in education, varying meanings are attributed to the term "rights". In 1995, the California Civil Rights Initiative invoked the language of the 1964 Civil Rights Act, reversing its previous meaning to advocate the abolition of affirmative action. This was illustrative of the path travelled thus far. California, a pioneer in the battle for racial equality in education in the 1960s, led in the opposite direction in the 1990s. This shift in the meaning attributed to "civil rights" demonstrates the risk of converting the term "rights" into a weasel word, which can accommodate almost any contents.

81. The frequent definition of human rights as protections *against* the Government, rather than also *by* the Government, is belied by governmental obligations towards children with disabilities. This clearly demonstrates that human rights cannot be cost-free. The Government cannot implement its human rights obligations without committing and sustaining public funding. Similarly, efforts to eliminate racial discrimination have demonstrated that dissociating race from poverty has not led to desired outcomes. Because economic exclusion has a visible racial and gender profile, revisiting the core concepts of equal and unequal rights seems timely. The aftermath of 11 September has revived calls for protection of people *by* the Government. It has also elevated respect for public services, which was undermined during previous decades. This provides an excellent opportunity for translating numerous commitments to provide excellent education to all children into a reality.

82. Many denials and violations of the right to education are being exposed and opposed, even if the language of rights is seldom used. Court cases entail a decade or two of litigation, not to mention large financial resources. Rapid and free-of-charge remedies in the form of human rights commissions, or *defensores del pueblo*, or ombudsmen, could translate the current emphasis on accountability in education into practice. This would also ensure that remedies are available to all those who cannot afford lengthy and expensive court cases.

83. The lack of recognition of the child's right *to* education, rights *in* education and rights *through* education prevent children from being treated as the subjects of rights. The exclusive focus on parental rights is a major impediment to recognition of the rights of the child. Parents make choices with or without consulting children, at their discretion. Adults vote in elections conveying or not the best interests of children, also at their discretion. Parentless children and those with irresponsible parents suffer in consequence. All children suffer the consequences of their lack of political voice. Furthermore, the abuse of children by their own parents is a world-wide phenomenon from which the United States is not exempt. This is a grim reminder of the need for human rights safeguards to prevent abuses of power by adults - even parents - over children.

84. The vertical and horizontal fragmentation of decision-making in education has created an immensely complex educational bureaucracy, with non-teachers in the public school system outnumbering teachers, and teachers typically having the lowest salaries. Accountability for students' performance would require simplifying and streamlining the system, as well as channelling inputs towards teaching and learning. Moreover, public schools are held accountable for outputs but the intake and inputs are beyond their influence. Their ability to control their intake is limited. Inputs into education are determined by political processes in which neither educational considerations nor legally recognized rights necessarily prevail. The rule of inverse proportion reigns, and schools and teachers facing the greatest challenge are provided with the least support.

85. The revival of the common-school ideal, aimed at creating an informed and self-governing citizenry by educating all children together, seems particularly pertinent in the aftermath of 11 September. Everybody hopes that the Great Depression will never be repeated, but the current economic recession is likely to be aggravated by the war effort. The Universal Declaration of Human Rights emerged, with the unstinting support of the United States, as a

pledge to remedy the previous absence of human rights safeguards - civil, political, economic, social and cultural. In the famous words of Maya Angelou, history cannot be unlived but, if faced with courage, need not be lived again.

Notes

[1] International human rights instruments, Core document forming part of the reports of States parties: United States of America, HRI/CORE/1/Add.49 of 17 August 1994, para. 90.

[2] "Selling a long and slow war: Interview with White House aides Karl Rove and Karen Huges", *Time* magazine, 8 October 2001.

[3] Mondale, S. and Patton, S.B. (eds.) - *School: The Story of American Public Education*, Beacon Press, Boston, 2001, p. 5.

[4] United States Supreme Court - *Meyer v. Nebraska*, 262 U.S. 390 (1923).

[5] Information at www.usdoj.gov/crt/ora/main.html.

[6] Information at www.usdoj.gov/crt/wviacla.htm.

[7] The International Covenant on Civil and Political Rights, which has been in force for the United States since 1992, allows temporary derogations during a public emergency (CCPR/C/21/Rev.1/Add.11 of 31 August 2001). On 14 September, President Bush proclaimed a national emergency as of 11 September (www.whitehouse.gov/news/releases/2001/09/20010914-4), which was followed by deprivations of liberty, suspensions of attorney-client privilege and the establishment of military tribunals, but a notification to the Secretary-General of the United Nations required by the Covenant did not ensue.

[8] Throughout her mission, the Special Rapporteur was asked what the right to education meant and she provided explanations of what it entailed. These are summarized in her reports, which define the right to education through the corresponding governmental obligations to make education available, accessible, acceptable and adaptable (E/CN.4/1999/49, paras. 51-74; E/CN.3/2000/6, paras. 30-65; and E/CN.4/2001/52, paras. 70-77).

[9] Act 34 and Act 27, *Laws of Virginia, 1642-43 and 1646.*

[10] Morgan, E.S., "Slavery and freedom: the American paradox", in Schreiber, J. and Elliott, R.C. (eds.), *In Search of the American Dream*, 1974, p. 179.

[11] The Massachusetts Compulsory School Act of 1647, *Records of the Governor and Company of Massachusetts, 1647.*

[12] Making a change is difficult as the varying funding criteria result in what Kenneth Wong has labelled "institutional conflict and policy incoherence" and described as follows: "federal

programmes often take into consideration the special-needs population without regard for the district's overall fiscal capacity. Consequently, federal funds are channelled to affluent districts even when their local taxes can provide supplemental services for the disadvantaged. At the same time, state aid to poor districts may overlook the needs of the disadvantaged, as it is allocated according to the tax burden of the property owners". Wong, K.K., *Funding Public Schools: Politics and Policies*, University Press of Kansas, 1999, p. 16.

[13] Text at www.ed.gov/inits/nclb/part2.htlm.

[14] Vinkovskis, M.A. - *The Road to Charlottesville: The 1989 Education Summit*, National Education Goals Panel, Washington D.C., September 1999, pp. 4 and 7.

[15] Orfield, G., "Policy and equity: lessons of a third of a century of educational reforms in the United States", in Reimers, F. (ed.), *Unequal Schools, Unequal Chances: The Challenges to Equal Opportunity in the Americas*, David Rockefeller Center for Latin American Studies, Harvard University Press, Cambridge/London, 2000, p. 422.

[16] United States Department of Justice, Overview by the Educational Opportunities Section of the Civil Rights Division, September 2001 (www.usdoj.gov/crt/edo/overview).

[17] Tomaševski, K., "Women in criminal justice", in Joutsen, M. (ed.), *Five Issues in Criminal Justice*, European Institute for Crime Prevention and Control, affiliated with the United Nations, (HEUNI) Helsinki, 1999, pp. 90-134.

[18] Gilbert, R. and Gilbert, P., *Masculinity Goes to School*, Routledge, London, 1998, p. 226.

[19] *A Nation at Risk: The Imperative of Educational Reform*, U.S. Government Printing Office, Washington D.C., 1983.

[20] United States Department of Education, *The Nation Responds: Recent Efforts to Improve Education*, U.S. Government Printing Office, Washington D.C., 1984.

[21] OECD, *Adult Literacy Survey*, Paris, 1995.

[22] "U.S. students average among international peers", press release, United States Department of Education, 4 December 2001 (www.ed.gov).

[23] On 23 May 2001 the House passed the *No Child Left Behind* Act (H.R. 1), and on 14 June 2001 Senate passed S.1 bill, entitled *Elementary and Secondary Reauthorization Act: The Better Education for Students and Teachers Act*.

[24] "Support undiminished for strong response to attacks", *The Washington Post*, 29 September 2001.

[25] "A blueprint for new beginnings", 1 September 2001 (www.whitehouse.gov).

[26] "Education in crisis: The State budget crunch & our nation's schools", Report prepared by Democratic staffs of the U.S. Senate Committee on Health, Education, Labor and Pensions and the U.S. House of Representatives Committee on Education and the Workforce, November 2001 (www.senate.gov).

[27] "President wants tax cuts equal to spending package", *New York Times*, 6 October 2001.

[28] The International Covenant on Civil and Political Rights has been in force for the United States as of 1992 and the International Convention on the Elimination of All Forms of Racial Discrimination as of 1994. Both were ratified with extensive reservations. Ratified international treaties have the status of federal law. They prevail over previous federal statutes as well as state or local law but the United States Constitution prevails over treaties. Moreover, the "treaties do not create new or independently enforceable private rights in U.S. Courts". (Initial report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, September 2000 www.state.gov).

[29] DAC/OECD, *Participatory Development and Good Governance*, Development Co-operation Guidelines Series, Paris, 1995, Part III, paragraph 31.

[30] Tomaševski, K., *Development Aid and Human Rights*, Pinter Publishers, London, 1989 pp. 50-53; Tomaševski, K., *Development Aid and Human Rights Revisited*, Pinter Publishers, London, 1993, pp. 84-86; Tomaševski, K., *Between Sanctions and Elections: Aid Donors and their Human Rights Performance*, Pinter/Cassell, London, 1997, pp. 19-21.

[31] David Forsythe has commented: "Since the end of the Cold War the United States has stitched together a crazy-quilt of bits and pieces of legislation and executive decisions that with some overstatement can be called a programme of official democracy assistance". Forsythe, D.P., "US foreign policy and human rights", in Forsythe, D.P. (ed.), *Human Rights and Comparative Foreign Policy*, United Nations University Press, Tokyo, 2000, p. 41.

[32] Note by the President of the Security Council, S/23500 of 31 January 1992, page 3.

[33] Address by General George C. Marshall, Secretary of State of the United States, at Harvard University, 5 June 1947 (www.oecd.org/about/ms-eng2.htm).

[34] USAID, "This is USAID", 24 July 2001 (www.usaid.gov/about).

[35] State Department, "What we do", August 2001 (www.state.gov).

[36] USAID, "The four pillars of USAID", Factsheet, May 2001 (www.usaid.gov); "Fiscal year 2002 Foreign Assistance Budget", July 2001 (www.usaid.gov).

[37] *Country Reports on Human Rights Practices - 2000*, U.S. Department of State, February 2001(www.state.gov).

[38] USAID, "Education & training", Executive summary (www.usaid.gov/educ_training, as revised 30 March 2001) and "Basic education and technical training", December 1982 (www.usaid.gov/pubs/ads/pps/basiced, as revised 12 December 2000).

[39] *Trafficking in Persons: USAID's Response*, Washington D.C., September 2001, pp. 3 and 11.

[40] USAID has an Office of Women in Development (www.usaid.gov/wid).

[41] "As girls' enrolment, persistence, and achievement in primary school appear to significantly exceed that of boys' in Lesotho, neither its national education reform nor USAID's ESS (education sector support) programme makes special provision for addressing gender disparity". Tietjen, K., *Educating Girls in Sub-Saharan Africa: USAID's Approach and Lessons for Donors*, U.S. Agency for International Development, Technical Paper No. 54, Washington D.C., June 1997, p. 4.

[42] "The Surgeon General's call to action to promote sexual health and responsible sexual behavior", 9 July 2001, www.surgeongeneral.gov/library/sexualhealth.

[43] *DeRolph v. State*, 93 Ohio St. 3d (2001) (www.sconet.state.oh.us).

[44] Patterson, J. T., *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy*, Oxford University Press, 2001, p. 1.

[45] United States Supreme Court, *Brown v. Board of Education of Topeka*, 347 U.S. 294, 17 May 1954.

[46] *"No child left behind"* (www.ed.gov/inits/nclb/partx2.htlm).

[47] Public education funding update, May 2001 (www.nea.org/lac/funding).

[48] *Petersons College Guide*, www.petersons.com, September 2001.

[49] *Open Doors 2001*, Institute of International Education, Washington D.C., November 2001, (summary at www.iienetwork.org).

[50] "Development Assistance Committee announces ODA figures for 2000", June 2001 (www.oecd.org).

[51] The budget for fiscal year 2002, p. 1018 (www.whitehouse.gov/omb/budget/fy2002), November 2001.

[52] World Trade Organization, "Higher (tertiary) education, adult education, and training: communication from the United States", document S/CSS/W/23 of 18 December 2000.

[53] *FY2000 Performance Overview*, U.S. Agency for International Development, Washington D.C., 3 April 2001, p. xii.

[54] Policy paper, "Program focus within basic education", USAID, last revised on 20 September 2000 (www.usaid.gov).

[55] *DeRolph v. State*, 93 Ohio St. 3d (2001), concurring opinion of Justice Douglas (www.sconet.state.oh.us).

[56] The structure of the judiciary in the State of New York is different from the rest of the country and the Supreme Court is not the highest judicial body. That judgement was appealed to the Appellate Division of the Supreme Court of the State of New York; hearings began on 24 October 2001 (www.cfequity.org).

[57] The Government of the United States holds that the concept of "minority" does not apply in the United States Organization for Security and Co-operation in Europe (OSCE)/High Commissioner on National Minorities, *Report on the Linguistic Rights of Persons Belonging to National Minorities in the OSCE Area*, Annex: Replies from OSCE Participating States, 1997) while the 1997 Strategic Plan of USAID stated that "the rights of minorities reflect the fundamental values of the American people" (www.info.usaid.gov/pubs/strat_plan).

[58] Department of Education, *Digest of Education Statistics*, 2000 edition (www.doe.gov).

[59] *Campaign for Fiscal Equity v. State*, full text of the judgment is available at www.edlaw.fplc.edu/Text/Library/case-campaign.equity.html.

[60] United States Supreme Court, *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973).

[61] The Special Rapporteur's global review of constitutional guarantees has demonstrated that the right to education, at least at the minimal level of free and compulsory education for all children, is guaranteed in 142 countries while 44 have no such guarantee. (E/CN.4/2001/52, paras. 66-67).

[62] The Third International Mathematics and Science Study, which compared the performance of 13-year-olds, placed the United States below Singapore, Japan, the Czech Republic, Switzerland, France and Russia, and just above Latvia, Spain, Greece and Romania. Tomaševski, K., *Human Rights in Education as Prerequisite for Human Rights Education*, Right to Education Primers No. 4, Gothenburg, 2001, pp. 21-24.

[63] Maran, M., *Class Dismissed. A Year in the Life of an American High School, a Glimpse into the Heart of a Nation*, St. Martin's Press, New York, 2000, p. xiv.

[64] United States Supreme Court, *Plyer v. Doe*, 457 U.S. 202, (1982) and *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

[65] Information is available at www.census.gov.

[66] The population is divided into two ethnic categories, Hispanic or Latino and Not Hispanic or Latino. The classification of "Latin American Americans" by ethnicity entails their opting for one of the available racial categories. Official figures are not available but estimates indicate that about half identified themselves as white while the other half selected "some other race" or "mixed".

[67] United States Supreme Court *Sweatt v. Painter*, 339 U.S. 629 (1950).

[68] *Texas v. Hopwood*, 78 F.3d 932 (5th Cir.) cert. denied, 518 U.S. 1033 (1996).

[69] Snapshots of the achievement gap in New York City Public Schools, Institute for Education and Social Policy, New York University, 10 October 2001.

[70] Initial report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, September 2000, (www.state.gov).

[71] *No Child Left Behind* (www.ed.gov/inits/nclb, part3 and partx2).

[72] Back-to-school address by United States Secretary of Education Rod Paige, National Press Club, Washington D.C., 4 September 2001, text at www.ed.gov/Speeches/09-2001/010904.htlm.

[73] The Census 2000 Supplementary Survey is available at www.census.gov.

[74] Children's Defense Fund, "Census 2000 Supplementary Survey: Poverty status during previous 12 months by age", www.childrensdefense.org/release010806.htm.

[75] Mississippi Report Card, *2000 Report on Mississippi's Public School Districts, School year 1998-1999*, Mississippi Department of Education, Jackson, 2000.

[76] Quality teachers, "every child's birthright". Final report of the Educator Pipeline Part II: Attrition and retention task force, Public Education Forum of Mississippi, Jackson, November 1998.

[77] Federal Interagency Forum on Child and Family Statistics, "America's children: key national indicators of well-being, 2000" (childstats.gov).

[78] *The Condition of Education, 2001*, National Center for Education Statistics, May 2001 (nces.ed.gov).

[79] *The Class of 2000: Four-year Longitudinal Report and 1999-2000 Drop-out Rates*, New York City Board of Education, New York, 2001.

[80] *The 1998 Board of Education of the City of New York Annual Report*, p. 3.

[81] Full text at nces.ed.gov and www.ojp.usdoj.gov/bjs.

[82] Crawford, D.K. and Bodine, R.J., "Conflict resolution education: preparing youth for the future", *Juvenile Justice*, vol. 8, No. 1, June 2001, p. 21.

[83] *Mozert v. Hawkins County Board of Education* (Mozert V) 827 F.2d 1058, 1069 (6th Cir. 1987), cert. denied, 484 U.S. 1066 (1988).

[84] Text at www.ed.gov/PressReleases/05-2001/05312001.html.

[85] Exit polls showed that 63 per cent of non-religious people voted for Gore and 30 per cent for Bush, while 63 per cent of those who attended a religious service more than once every week voted for Bush and 36 per cent for Gore. Those who self-identity as "white religious right" voted 80 per cent for Bush and 18 per cent for Gore. (Data available at www4.cnn.com/ELECTION/2000/results/national.html).

[86] Rallying the armies of compassion, Foreword by President George W. Bush, text available at www.whitehouse.gov/news/reports/faithbased, June 2001

[87] United States Supreme Court, *Barnette*, 319 U.S. 637.

[88] Religion includes "secular humanism" (*Torcaso v. Watkins*, 367 U.S. 488 (1961)) or else a "religion of secularism" (*Abington School District v. Schempp*, 374 U.S. 203 (1963)).

[89] *Lamb's Chapel v. Center Moriches Union Free School District*, 113 S. Ct. 2141 (1993).

[90] United States Supreme Court, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

[91] United States Supreme Court, *Board of Education v. Pico*, 457 U.S. 853, 869 (1982) and *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

[92] An illustration of this is a warning in schoolbooks which says that evolution is a controversial theory, adding: "No one was present when life first appeared on Earth. Therefore, any statement about life's origins should be considered as theory, not fact."

[93] Supreme Court of Tennessee, *Scopes v. State*, 154 Tenn. 105, 289 S.W. (1927).

[94] United States Supreme Court, *Epperson v. Arkansas*, 393 U.S. 97 (1968).

[95] United States Supreme Court, *Edwards v. Aguillard*, 482 U.S. 578, 19 June1987.

[96] Fliers distributed around shopping malls include texts such as this: "The theory of evolution is just a theory, yet our public school's texts do not mention the significant amount of scientific evidence against it. Why the censorship?"

[97] The science standards as recommended by the Kansas Science Education Standards Writing Committee (albeit after numerous alterations) were adopted by a vote of 7 to 3, overriding arguments by members who were "personally not ready to accept the idea that nature was solely responsible for the origin of life". The Kansas State Board of Education Meeting Minutes, 13 February 2001 (www.ksde.org/commiss/bdmin/Feb01mins.html).